12a 1952

Biggest Award To Negro

KNOXVILLE, Tenn.—The highest damage award for a Tennessee Negro in generations has gone to the widow of a man who was killed in a traffic accident.

Mrs. Mary Snapp, of Hawkins County, Tenn., has been awarded $31,000 by the Tennessee Court of Appeals, which affirmed a lower court's verdict against Dixie-Ohio Express Company.

The higher court, however, lowered the award from $36,000, explaining that figure was excessive as based on similar death cases.

Mr. Snapp was killed in a truck collision on U. S. Highway 11-W, five miles east of Rogersville.

Dixie-Ohio Express Company had appealed the lower court's judgment of $36,000, assigning errors. The firm claimed there was no evidence to support the verdict and that the verdict was excessive.

2 Win $26G Damage Suits In Tennessee

KNOXVILLE, Tenn. — Two Knoxville Negroes have won $26,000 in damages — one of the largest settlements to Negroes in Knoxville history.

Babe Settles, a cement finisher, was working on a Lonsdale housing propect last May, when a boom on a crane operated by Acme Construction Co., buckled and struck Settles, who was killed outright.

His widow, Mrs. Nina Settles sued the company for $100,000 damages. Circuit Judge William C. Burton last Friday awarded Mrs. Suttles $12,904.

Roosevelt Moody, an employee on the project, was injured by the same boom. He had sued for $50,00 was awarded $13,350.

Pastor's Widow Wins $10,000

Labor Leader-Coal Miner Shot in Back In '48; Killing Caused Mine 'Walkout'

BIRMINGHAM, Ala.—Mrs. Allie Glass Butler, widow of the late Rev. Captain L. Butler, who was shot in the back and killed by sheriff's deputies at the Tennessee Coal and Iron Company, June 5, 1948, was awarded damages of $10,000 by an all-white jury here during Holy Week. She had sued the U. S. Steel subsidiary for $50.000.

The then 53-year-old Baptist pastor, father of thirteen children and grandfather of eight, coal-miner and vice president of the Edgewater Local of the United Mine Workers of America, was the eighth Negro killed in the Birmingham area in a period of seventy days when the four white men shot him in 1948. At that time a coroner's jury ruled the shooting was "justifiable homicide."

The white deputies were employed by the T. C. and I. firm at the time and claimed that they shot the minister in self-defense, charging he drew a pistol on them. Atty. Bryan Chancey, representing the widow, charged the deputies had no proof of their "self-defense" claim, and that the accused men had failed to produce the gun which they alleged the Rev. Mr. Butler drew on them.

When the Rev. Mr. Butler was slain, a storm of resentment arose in the area and both Negro and white miners staged a protest "walk-out" at some six mines over the shooting. The NAACP here demanded a full scale investigation and prosecution. The case hung fire for four years and the 1952 trial lasted nearly three days.

Ala. Widow Wins $10,000 Judgment

BIRMINGHAM — A $10,000 judgment last week was awarded the widow of a minister shot to death in 1948 by deputies employed by the Tennessee Coal and Iron Division of the U.S. Steel Corporation.

Captain Butler, a 53-year-old coal mining minister and father of 13 children was shot to death after a white girl claimed he flipped her a note inviting her to meet him. The officers allegedly waited for Butler at a place where the girl said he asked her to leave a reply note.

Both officers later claimed that Butler drew a pistol and they shot in self defense.

His wife, Addie Glass Butler, then sued the company contending that the shooting was unlawful and without provocation.

Rail Employee Wins Lawsuit For $47,500

MONTGOMERY, Ala—A railroad resident-employe of this city was awarded one of the largest lawsuit settlements in Alabama court history last week in a Birmingham court.

Edward C. McCall, 42, of 285 South Jackson Street, Montgomery, received a $47,500 judgment against the Atlantic Coast Line Railroad. He was represented by Godbold and Hobbs, Montgomery lawyers.

Mr. McCall, an Atlantic Coast Line employe, lost an arm as he tried to uncouple two railroad cars in the railroad yards in Bainbridge, Georgia.

He also suffered severe lacerations of the leg, which necessitated amputation between th knee and ankle, as he fell beneath a freight car, according to John Godbold, one of his counsels.

The case was set to come up in court this morning in Birmingham before the settlement was reached.

Godbold stated that he believed it was the largest personal injury settlement ever made in Alabama.

Hobbs and Godbold were assisted by the Birmingham law firm of Reeves, Pettus and Peterson.

Win $72,000 Suit From Negro Taxi Company

DALLAS. — A jury in Fourteenth District Court Friday held that a man had suffered $72,794 damage, plus doctor and hospital bills, when a State Cab Company taxi hit him last year.

Paradoxically, lawyers for the plaintiff, Norris Gomez, said they expected to appeal the case.

Gomez contended that he had been walking along a sidewalk on Harry Hines Boulevard on June 18, 1951, when a State Cab jumped the curb and hit him. He suffered a compound fracture of both legs, and doctors say he is crippled for life.

His lawyers, Reuben Williams and Arthur Lee Moore, filed a suit against the State Cab company, which operates Negro taxicabs, and the City Transportation company, which has a monopoly on taxicab service under a franchise from the City of Dallas.

At the defense's urging, Visiting District Judge R. C. Slagle of Sherman dismissed the City Transportation Company as a party to the lawsuit.

The jury held Friday that the cab driver had not kept a proper lookout, failed to sound his horn, failed to turn to avoid hitting Gomez and failed to apply his brakes.

Attorney Williams said he probably would appeal Judge Slagle's decision that the City Transportation company could not be held liable. He remarked that it would be difficult, if not impossible, to collect a large sum of money from the Negro company. And he said he would contend that the white firm is liable because it has permitted the Negro firm to operate, under a three-way agreement between the two companies and the City of Dallas.

12b 1952

Teacher Discrimination Case Heads For High Court

NEW YORK—(ANP) — A federal judge last week granted Miss Dorothy J. Brown, Negro teacher, right to appeal her case, charging racial discrimination, to a federal court.

Miss Brown based her charges of discrimination on an application she filed in 1949. At that time Raymond Lindbloom, supervising principal, indicated that she would be appointed and assigned to a school. Later, upon learning she was a Negro, he refused to submit her name to the school board for formal appointment. Miss Brown then filed a complaint with the New York State Commission Against Discrimination which found "no probable cause" of discrimination.

After this action by SCAD, Miss Brown filed suit in the Supreme court in Mineola in November 1950, seeking a writ of mandamus to compel the board to appoint her.

Upon denial of her petition, Miss Brown took her case to the Apellate division in Brooklyn which unanimously reversed the lower court decision and held that Lindbloom had exceeded his authority in withholding her name from the board.

The school board appealed this decision. But the New York State court of Appeals, affirmed decision of the Appellate division and ordered Lindbloom to submit Miss Brown's name to the board.

Despite this order, the board refused to consider Miss Brown's application. Meanwhile, she submitted applications to five other school districts in Nassau county in order to establish the pattern of discrimination. Her application was rejected in each instance.

The school board consistently has sought dismissal of the complaint on grounds that there was no cause for action nor any federal issue involved. Judge Leo F. Rayfield, of federal court, last week denied the board's motion and opened the door to trial of the issue in federal court.

Maid, GI Affected By Verdict

Robbery, Assault Convictions Set Aside By Jurists

Special to the Journal and Guide

RALEIGH, N. C.—In two separate opinions which mean new trials for Negro defendants, the State Supreme Court last week slapped at the two judges who presided at the original trials and delivered a punch at a police officer figuring in one of the cases.

The officer was W. P. Hillard of Burlington, N. C. whom the court found "badgered" a Negro maid into making a confession. In this case the court slapped at Judge William T Hatch, who allowed the confession to be admitted in evidence.

* * *

IN ANOTHER CASE, the court had a rap on the wrist for Judge Paul J. Frizzelle. It said his actions prevented a fair trial for a colored soldier accused of assaulting a white filling station operator in Person county. There too the court decreed a new trial for the defendant.

In the Burlington case, Mrs. Christine Warren stood accused of the theft of $495 that had disappeared from the home of Zacharias Toupoulas. The state said that $100 had disappeared from his home in September 1949, another $300 three months later and the remaining $95 in February 1951.

* * *

THERE WAS, said the Supreme Court, no evidence connecting the defendant with the stolen money except a confession allegedly made by her to the Burlington police officer.

When the state trotted forth the confession at the trial, the defense objected on the ground that it had been given involuntarily. At that point Judge Hatch excused the jurors and heard accounts from Hillard and the defendant on how the confession was secured. There was little conflict between those accounts, the court said.

12 b 1952

Negro Firemen Win Railroad Lawsuit

BY CARTER JEWEL

RICHMOND, Va. — (ANP) — Negro firemen on the Atlantic Coast Line railroad won a five-year old discrimination suit February 19 in Federal District court here.

Judge Sterling Hutcheson signed an order last week enjoining the railroad and the Brotherhood of Locomotive Firemen and Enginemen from discriminating in promotion practices against Negro firemen in their employment on steam locomotives and Disel engines.

The original complaint was filed February 14, 1947. It charged that the ACL firemen on account of their race, were arbitrarily denied promotion to an engineer classification.

The court's injunction restrained the railroad and brotherhood from denying Negro firemen employed on the ACL their rights to assignments as firemen on steam locomotives and helpers on Diesel locomotives because they are Negroes.

The late Charles H. Houston, brilliant attorney and law instructor at Howard university, Washington, D. C., was the pioneer in the legal battle for the rights of Negro firemen on the ACL and other southern railroads. He died April 22, 1950 before he knew his efforts had won victory for the Negro firemen.

12d 1952

Hearings Ended On Segregation

WASHINGTON, Dec. 11 (UP).—Attorneys for Delaware and the District of Columbia pleaded with the Supreme Court today not to upset racial segregation in schools and thus foment "hatred" between white and Negro students.

But attorneys for Negro parents urged the court to erase the "badge of inferiority" stamped on their children.

The pleas came as the court completed three days of hearings on the momentous question of whether segregation in schools violates the Constitution. The structure of the educational systems in 21 States and the Nation's Capital may hang on the court's decision. A ruling is not expected for many weeks.

DEMORALIZATION' SEEN

Delaware's Attorney General, H. Albert Young, told the court the controversy raised in his State over segregation in schools was "demoralizing Negro as well as white pupils."

Milton D. Korman, District of Columbia attorney, warned against "outbursts of hatred" in non-segregated schools and said Congress, not the court, should decide when segregation should be abolished. He said there was "feeling between the races and we cannot hide that fact."

But James M. Nabrit, Jr., attorney for a group of Negro parents in the District, argued that school segregation laws were "bills of attainder"—in violation of the Constitution—because they imposed punishment without trial.

And Louis L. Redding, Wilmington Negro attorney, argued that racial segregation laws were "arbitrary and unreasonable" and, therefore, unconstitutional.

OTHER STATES AFFECTED

The court also is considering the constitutionality of school segregation in South Carolina, Virginia and Kansas. Racial segregation likewise exists in schools of 17 other States.

Young said the Delaware Supreme Court destroyed the "stability" of the State's school system by ordering the Delaware Board of Education to admit Negro school facilities were inferior. The State court did not rule on the constitutionality of segregation.

Young said the State was equalizing the schools for both races with all possible speed.

Redding said Delaware never ratified the Constitution's 14th Amendment, designed to give Negroes "equal protection" before the law. He cited Delaware legislation which he said objected to all measures to "equalize the Negro race and white race."

Jack Greenberg, attorney representing the National Association for the Advancement of Colored People, urged the court to adopt a finding by a Delaware court of chancery that "State-imposed segregation . . . is injurious to Negro children."

Justice Felix Frankfurter broke in to demand: "How can we do that? It's all a matter of opinion. Not that I don't respect the opinion, but we are dealing with very subtle testimony."

Attorneys See 'Blanket' Ruling On Segregation

Arguments Ended; 3 Possible Decisions Are Believed Likely

By Robert K. Walsh

Supreme Court justices today weighed vast and varied articles in a single legal package that will help them decide the future of racial segregation in public schools of the District and the States.

They finished hearing arguments late yesterday on issues directly affecting the District and Delaware. Earlier this week, they listened to debate on suits from Virginia, South Carolina and Kansas.

Those cases have different angles on which the tribunal conceivably could hand down diverse rulings. But essentially the same main lines of contention ran through arguments offered by both sides in all of them.

Basic Pronouncement Possible.

This caused several of the attorneys — defending or fighting governmental-imposed separation of Negro and white children in public schools—to expect that the final decision might be a blanket and basic pronouncement, either:

1. That such school segregation, in itself, is unconstitutional and contrary to statutory provisions and, therefore, must be ended in the District and wherever else it exists in this country.

2. That segregated systems may be maintained, so long as there is real equality of educational facilities for both races, in accordance with court decisions dating back to the 1896 judicial position on the separate-but-equal doctrine.

3. Or as was emphasized in argument yesterday by Assistant Corporation Counsel Milton D. Korman for the District, that a change in the segregated setup here is something for Congress and not the courts to determine. Similarly, so far as States are concerned, the tribunal could hold that abolition or retention of segregation is a matter for the State legislatures to handle.

Reluctant as to Forecasts.

Attorneys, since early last Tuesday afternoon, have been telling the court that the outlawing of school segregation would or would not cause major administrative difficulties, if not serious social troubles. After the hearings, most of them preferred not to speculate either on how or when the court will rule, or what might happen as a result.

Mr. Korman commented that he did not believe new legislation—except minor revisions in present statutes—would have to be enacted for the District school system, if the Supreme Court struck down segregation.

The District government's spokesman, representing school officials who refused to admit Negro children to the Sousa Junior High School, asked the court to uphold the dual system here.

From the standpoint of the history of the District, the statutes enacted by Congress as long ago as 1862, and the Fifth Amendment to the Federal Constitution, the system is valid, legal and just, Mr. Korman contended.

Citing numerous gains he said have been made in racial integration in recreational, entertainment and other fields here, Mr. Korman noted that they were "accomplished without the aid of the courts."

Cites Racial Feeling.

Exclaiming that he hoped the day soon will come "when the races can live together without friction," Mr. Korman said:

"We, nevertheless, cannot hide the fact that there is a feeling between the races. It is deplorable, but we must face the facts."

Mr. Korman and James M. Nabrit, jr., an attorney for District opponents of school segregation, engaged in a lively and, at times, impassioned discussion.

The District government's lawyer asserted that the opposition suggested only that "it is time for a change." Mr. Nabrit, who is secretary of Howard University and a law professor there, accused Mr. Korman of failing to meet the constitutional issue in the case.

"He doesn't believe there is a constitutional issue," Mr. Nabrit said. "Instead, he has dwelt on the past and on the white man's burden. In 1952 the Negro should not be viewed as anybody's burden. The Negro is serving in an unsegregated war in Korea. All he asks in the District is that his children go to school with the children of his white comrades in Korea."

Cites Status of D. C.

Mr. Nabrit closed his anti-segregation plea with a reminder that Washington is "the capital of democracy and the capital of the free wrold." There is no place for racial segregation in such a capital, he declared.

Earlier, Mr. Korman assured the court that he was aware of the world position of Washington and of the "lies" that Communist countries tell about this city. That did not add up to any constitutional issue, he insisted.

"Would a change in the dual school system here stop the Iron Curtain countries from telling lies about us if they want to?" he asked.

That comment, Mr. Korman indicated, was directed more at Attorney General McGranery than at anti-segregation lawyers in the District case. The Attorney General recently filed a brief requesting the court to outlaw segregation because, among other things, "Washington is a window through which the world looks at us."

Referring further to the Justice Department brief, Mr. Korman told the court that the Attorney General himself "recognizes the vexing problems that would arise in many places" if school segregation were abolished by the Supreme Court.

Sees Problem for Congress.

This tied in with Mr. Korman's fundamental position that "this issue of school segregation should be left to Congress, where it belongs."

When he objected that the opposition seemed to rely on the "time for a change" theory, he was asked by Justice Black whether he thought it was time. Mr. Korman said he did not. When Justice Jackson inquired about the possibility of a "promise of a change," Mr. Korman answered:

"Yes, if the change comes in a proper way through Congress and proper legislative channels. Perhaps this is the time. I do not know. But I do say that, if this is the time for a change, the arguments should be placed before Congress and not the courts."

Mr. Korman opened his argument by contending that the legislative history of the congressional enactments dating back to 1862 shows that:

1. Congress established a mandatory dual school system here.

2. Congress enacted the laws setting up the separate schools not to "stamp Negroes with a badge of inferiority" but to help them.

Sees No Rights Opposed.

3. The laws, most of them passed by the same Congress that approved the 14th Amendment resolution, do not violate the letter or spirit of that guarantee, nor do they violate the 5th Amendment or the Federal Civil Rights Act.

5. Congress, by later legislative enactments and separate appropriations for Negro and white schools here, intended the segregated system here "to help both Negro and white children" and "to assure an atmosphere wholesome to the reception of education by both races."

Several of the justices indicated they wanted to know more about congressional appropriations for support of the segregated schools here. Justice Frankfurter asked Mr. Nabrit whether, during the many years of operation of the District statutes relating to schools, there was outspoken opposition in Congress to appropriations that might have supported segregation.

Mr. Nabrit said there was much discussion at various times. He added, however, that he and his associate, Attorney George E. C. Hayes, held to the basic contention that any such appropriations or statutes requiring or encouraging segregation were without

constitutional authority.

Delaware Closes Debate.

Historic hearings on the five segregation suits ended late yesterday with debate on a case from Delaware. That differed from the others in several respects. The State, for example, was appealing from a lower court order that Negro children be admitted to white schools.

Attorney General H. Albert Young of Delaware explained that the State Supreme Court did not say Delaware's school segregation law was unconsitutional. He complained, however, that the State court decreed that school officials immediately admit the Negro children to white schools without giving a reasonable time to equalize facilities.

Mr. Young described the effect of the State court's decision as demoralizing and as having a terrific impact on all public schools in Delaware.

Would Go Beyond Decision.

Attorneys Jack Greenberg of New York and Louis L. Redding of Wilmington, representing the Negro children, urged the high court to uphold the Delaware court's decision, so far as it went. They suggested that the tribunal go beyond this and declare that classification of pupils on the basis of race alone in public schools is "arbitrary and unreasonable and, therefore, unconstitutional."

Mr. Greenberg protested that Attorney General Young's recommendation for "gradual equality of facilities does not protect constitutional rights and may delay any improvement at all."

12d 1952

Informer P.1 Houston, Texas
Sat. 12-29-52

ASK COURT TO HALT JIMCROW EDUCATION.—Standing on the steps of the United States Supreme Court before opening arguments in cases seeking end of segregation in public schools of four states and the District of Columbia are, left to right: Howard Jenkins, Jr., and James M. Nabrit, both of the Howard University law faculty; Spottswood W. Robinson, III, NAACP attorney of Richmond, Va.; Frank Reeves, NAACP legal representative in Washington; Jack Greenberg, NAACP assistant special and Thurgood Marshall, NAACP special council, both of New York; Louis Redding, NAACP attorney of Wilmington Del.; U. S. Tate, NAACP Southwest regional attorney Dallas, Texas; and George E. C. Hayes, Washington attorney. Not shown is Robert L. Carter of New York, NAACP assistant special counsel, who argued the Topeka, Kas. case. Mr. Marshall argued the Clarendon County, S. C. case; Mr. Robinson, the Virginia case; Mr. Greenberg and Mr. Redding, the Delaware case; and Mr. Nabrit and Mr. Hayes, the District of Columbia case, sponsored by the Consolidates Parents League of Washington, D. C.

Court Seems Likely to Uphold Segregation

AT LEAST two months, possibly six, are expected to elapse before the United States Supreme Court hands down its epoch-making decision on the constitutionality of segregation in the public schools. It is normal for the court to take not less than 30 days in an important matter of this kind, and the State of Delaware, a late-comer in the pending cause, has been given until sometime next month to file its briefs papers. Hence two months seems a probable minimum.

In the unlikely event (at least, we think it unlikely), that the court rules all segregation in the public schools unconstitutional, the tribunal may even wait until June, the end of the school year, so that the Summer vacation will be available for the public school authorities and the public to try to adjust themselves to the new, and far-reaching dispensation. A sudden ruling of this sort in the middle of a school session could bring near-chaos.

However, the more probable course would seem to be a finding by a majority of the court that segregation can be maintained, *where facilities are equal*, with the decision coming down about February or March. While this ruling would not entail the vast dislocations which would necessarily accompany the outlawry of all segregation, the financial burden thus imposed on the States and localities would be great. Presumably the court would require equalization within a fairly brief time, and in order for this to be achieved, the States, counties and cities would immediately be confronted with the need for raising and spending large sums.

The questions asked by the various justices during the three-day argument this week before the court afford a clue to their thinking concerning the segregation issue. Various interpretations are placed upon the questions propounded, and the statements made by the justices in connection with some of these questions, but persons who were present in the courtroom feel that several members of the court may be put down as definitely against eliminating segregation at this time. It is the belief of these observers that a minimum of five of the nine justices, perhaps more, will be found upholding segregation in the schools—provided, of course, that facilities are equalized.

The District of Columbia is involved in the forthcoming decision, along with the States of Virginia, South Carolina, Kansas and Delaware. The district stands on a different legal basis from the others, however, since the fourteenth (or "equal rights") amendment does not apply to it, whereas the fifth (or "due process") amendment, does apply.

The District of Columbia is controlled by Congress, and it seems altogether possible that the national Legislature will end segregation there by statute in 1953, pursuant to the wish expressed by DWIGHT EISENHOWER during the recent presidential campaign. MR. EISENHOWER said then that he would use his best efforts to wipe out "every vestige of segregation in the District of Columbia."

Various lower Federal courts have held that segregation is constitutional, where facilities are equal. Among these was the three-judge tribunal presided over by CIRCUIT JUDGE JOHN J. PARKER which sat in the South Carolina case now pending before the Supreme Court.

There is also the recent opinion of former United States DISTRICT JUDGE ROBERT N. WILKIN, of Ohio, who ruled in a case involving the use of municipal golf courses in Nashville by Negroes, that "segregation, so far as the United States Constitution is concerned, is not forbidden, if separate, but equal, treatment is accorded to the segregated groups." JUDGE WILKIN was sitting as a special Federal judge in the case, since he retired from the bench in 1949.

All this indicates that there is an excellent chance that the Supreme Court will permit Virginia and the other 16 States where there is total or partial segregation in the public schools, to equalize facilities, as an alternative to educating the races together. But we must be patient. This tremendously important decision won't be coming down for some time.

Latest Supreme Court Decision

LAST week the U. S. Supreme Court upheld an Illinois "group libel" law which prohibits the publication, dissemination or display of any "lithograph, moving picture, play, drama or sketch" that would expose citizens of any race, creed or color "to contempt, derision or obloquy."

In handing down this decision the high court was sustaining the conviction of Joseph Beauharnais who purchased and distributed "literature reflecting on the Negro race" and was tapped on the wrist with a $200 fine.

As president of the White Circle League of America, Beauharnais challenged the Illinois law as violative of the due process clause of the Fourteenth Amendment, which provides that "no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States," nor "deprive any person of life,. liberty and property without due process of law."

Colored Americans almost certainly were unanimous in applauding the conviction of Joseph Beauharnais and there are few who will not praise the Supreme Court decision respecting him.

Justice Felix Frankfurter who wrote the majority opinion (backed by Justices Vinson, Burton, Clark and Minton) held that the due process clause does not prevent a state from punishing libels against a group as well as against an individual; and then he added significantly:

"Our finding that the law is not constitutionally objectionable carries no implication of approval of the wisdom of the legislation or its efficacy."

This decision opens the door to similar legislation in other states, and indeed, such has been frequently and variously recommended; but our people should remember that here, again, a precedent is established which may be a two-edged sword.

If the colored group cannot with impunity be libeled by dissemination of flagrant lithographs, moving pictures, plays, dramas or sketches, neither can the white group; and unwittingly the High Court may have placed a weapon in the hands of certain states enabling some Negrophobes to punish effectively Negro newspapers, magazines and other media which fight back too extravagantly against their enforced status.

Dissenting opinions of Justices Jackson, Black, Reed and Douglas expressed concern over the possible use of this precedent, just as we have.

Justice Black warned that the law under the Court's ruling, could be applied to a "book publisher, newspaper, radio or television station, candidate or even a preacher"; actually imposes state censorship over every means of communication, and calling it a group libel law "does not make the censorship less deadly."

He further reminded minority groups who hail the decision as a great victory for them, that "they might consider the possible relevancy of this ancient remark: 'Another such victory and I am undone!'"

Said Justice Douglas, "To me this is an ominous and alarming trend."

One shudders to think what may happen if a large number of states not politically controlled by friends of the colored people should pass laws similar to the Illinois measure, and turn it against this increasingly militant minority.

All that glitters is not gold, and a tactical partisan victory can sometimes become a disastrous strategic defeat.

For this reason violations of the basic principles upon which the Republic has prospered should not be tolerated or endorsed just because a partisan advantage is gained thereby for some particular interest or group.

Today it is the steel industry or Joseph Beauharnais that is hit and hurt, but tomorrow (once the precedent has been set) it may be the corner grocer, the eighty-acre farmer, the neighborhood pastor, the NAACP or this newspaper.

One can name over a dozen countries where this has happened.

12d 1952

High Court Slates Segregation Case

Courier-Journal
June 6-10-52 p. 2

Appeal That Could End Some States' Public Schools To Be Heard In Fall

Washington, June 9 (AP)—The Supreme Court wound up its current term today by foreshadowing a potentially historic decision on segregation in public schools.

Governor James F. Byrnes of South Carolina has said that if his state should lose the right to segregate children, South Carolina would abandon its public-school system.

Georgia, Virginia, and Alabama have taken steps that could lead to dropping public schools in favor of private schools if segregation is outlawed.

The Supreme Court said today it would hear, after it meets again October 6, arguments on two appeals by Negro parents who say their children are stigmatized as inferior by having to attend all-Negro schools. The cases originated in Topeka, Kan., and Clarendon County, Couth Carolina.

Facilities Not Issue

In both places the appeal is against segregation pure and simple, not over facilities offered in the segregated schools. Thus the Supreme Court's ruling could affect public-school segregation wherever practiced.

In other actions the high court:

1. Said the Railway Labor Act bars unions from taking jobs from Negro workers to give them to white workers. The federal courts must issue injunctions, the 6-to-3 rulin gsaid, "to protect those threatened with such an unlawful use of power" by a union.

The case arose from provisions of an agreement between the Brotherhood of Railroad Trainmen and the St. Louis-San Francisco Railway. The court found that the contract threatened Negro train porters "with loss of their jobs because they are not white and for no other reasons."

Minton, Vinson, Reed Dissent

Justice Black delivered the majority opinion, Justice Minton filed a dissent concurred in by Chief Justice Vinson and Justice Reed.

2. Held valid an Oregon law requiring that a criminal claiming insanity must prove beyond a reasonable doubt that he is insane. The 7-to-2 decision upheld the death sentence of Morris Leland for a sex killing near Portland, Ore., in 1949, when Leland was 22.

Justice Clark read the majority opinion, Justice Frankfurter read a sharply worded dissent, in which Black joined, calling the Oregon law a "legal oddity" because it requires the accused, and not the Government, to carry the burden of proof.

3. Ordered dismissed a case in which three big unions questioned the validity of the Government's 1950 seizure of the railroads to avert a strike.

Dispute Has Been Settled

The case was dismissed as moot since the labor dispute that brought about seizure has been settled and the railroads have been returned to private ownership. The Government seized the railroads under a special emergency law.

4. Deferred action, at least until fall, on a Justice Department request that the high court settle the question of who owns some $69,000,000 worth of stock of the American President Lines.

The Government claims the stock was forfeited to it when the firm got a Government loan. The loan has been repaid, and the borrowers demand possession of the controlling stock, held by the Government. A contempt-of-court action against Secretary of Commerce Sawyer is involved.

2 Courts Upheld Segragation

The school-segregation case went to the Supreme Court from two special federal courts. They upheld segregation in Topeka and in Clarendon County, South Carolina.

The special courts cited an earlier Supreme Court decision that segregation is permissible if equal facilities are provided for both races. The Supreme Court has ruled also that the states, in regulating their public schools, have the discretion to segregate.

The special court that ruled on segregation in Topeka decided facilities were substantially equal for whites and Negroes. Segregation continues in Topeka through the sixth grade, after which the two races mingle at school.

In Clarendon County the special court ruled that school authorities were doing all "humanly possible" to equalize school conditions.

SCHOOL SEGREGATION OPINION SET FOR FALL

U.S. High Court To Recess Until Oct. 6

Courier-Journal

RULES ON RAIL RACE BAR

approved

By The Associated Press

WASHINGTON, June 9. — The Supreme Court wound up its current term Monday by foreshadowing a potentially historic decision on segregation of white and Negro children in public schools.

Gov. James F. Byrnes of South Carolina has said if his state should lose the right to segregate children South Carolina will abandon its public school system.

Plans In Three States

Georgia, Virginia and Alabama have taken steps that could lead to dropping public schools in favor of private schools if segregation is outlawed.

The Supreme Court said Monday it will hear, after it meets again next Oct. 6, arguments on two appeals by Negro parents who say their children are stigmatized as inferior by having to attend all-Negro schools. The cases originated in Topeka, Kan., and Clarendon County, S. C.

June 6-10-52

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In other actions of its final opinion day before recess, the high court:

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The case arose from provisions of an agreement between the Brotherhood of Railroad Trainmen and the St. Louis-San Francisco Railway. The court found that the contract threatened Negro train porters "with loss of their jobs because they are not white and for no other reason."

Black Gives Opinion

Justice Hugo Black delivered the majority opinion. Justice Sherman Minton filed a dissent concurred in by Chief Justice Fred Vinson and Justice Stanley Reed.

2. Held valid an Oregon law requiring that a criminal claiming insanity must prove beyond a reasonable dout that he is insane. The 7-2 decision upheld the death sentence of Morris Leland for a sex killing near Portland, Ore., in 1949, when Leland was 22. Justice Thomas Clark read the majority opinion. Justice Felix Frankfurter read a sharply worded dissent, in which Black joined, calling the Oregon law a "legal oddity" because it requires the accused, and not the Government, to carry the burden of proof.

3. Ordered dismissed a case in which three big unions questioned validity of the Government's 1950 seizure of the railroads to avert a strike. The case was dismissed as moot — no longer live — since the labore dispute that brought about seizure has been settled and the railroads returned to private ownership.

But dismissal of the case by the high court meant rejection of the union's contention that the seizure may not have been legal. The Government seized the railroads under a special emergency law.

President Lines Stock

4. Deferred action, at least until fall, on a Justice Department request that the high court settle the question of who owns some 69 million dollars worth of stock of the American President Lines, Inc.

The Government claims the stock was forfeited to it when the firm got possession of the controlling stock, held by the Government. A contempt of court action against Secretary of Commerce Charles Sawyer is involved.

In the school segregation case, the special Federal courts which upheld segregation, cited an earlier Supreme Court decision that segregation is permissible if equal facilities are provided for both races. The Supreme Court has also ruled that the states, in regulating their public schools, have discretion to segregate.

Court To Decide Whether Segregation In Elementary Public Schools Be Outlawed

WASHINGTON (AP)—The Supreme Court today agreed to say whether segregation of white and Negro children in elementary public schools be outlawed.

The court granted hearings on two appeals by Negro parents who claim segregation is a "stigmatizing badge of inferiority" which has a bad effect upon their children. They contend segregation therefore violates the constitutional guarantee of equal protection of the laws.

The appeals contest the validity of segregation only in schools in Topeka, Kans., and Clarendon County, S. C. However, the outcome of the cases will affect public school segregation generally.

The high tribunal will hear arguments on both appeals during its new term which begins October 6 and may hand down a decision late this year or early in 1953.

Governor James F. Byrnes, of South Carolina, has said that if his state loses its fight in the courts to maintain segregation, the public school systems there will be abandoned.

Other southern states — notably Georgia, Virginia and Alabama — have taken steps which could lead to abolition of the public school system, in favor of privately - operated classrooms.

The Negro parents involved in the appeals accepted today asked the high court to overturn decisions by two special federal district courts which sat in Topeka and Charleston, S. C.

The special courts both upheld segregation in public schools, citing an earlier Supreme Court decision that segregation is permissible if equal facilities are provided for both races. The highest tribunal also has ruled that the problem of segregation is within the discretion of states in regulating their schools.

In earlier decisions the Supreme Court ruled against segregation as it was practiced at the time at the University of Oklahoma and Texas.

The court said the universities did not furnish truely equal opportunities to Negroes.

In the Topeka grade school case, the special court found facilities offered Negro and white children were substantially equal.

In the South Carolina case, the special court ruled that school officials had complied with its decree to equalize facilities "as soon as humanly possible."

It said "no good could be accomplished for anyone" by ordering segregation ended at once.

The South Carolina case was filed in the Supreme Court last August. In January the high tribunal sent it back to the special court for findings on what was being done to equalize educational opportunities in Clarendon County.

The March 13 ruling caused the Negro parents to appeal again to the Supreme Court.

In Topeka, segregation ends with the completion of the sixth grade. The junior and senior high schools are racially integrated.

High Tribunal Segregation Decision Due

Tomorrow Is Set For Ruling On Issue Of Public Schools

WASHINGTON, June 7 (AP)—The Supreme Court is scheduled to wind up its current term on Monday with a decision on two appeals challenging the segregation of white and Negro pupils in elementary public schools.

Negro parents filed the appeals, asserting constitutional rights of their children were violated by segregation in the schools of Topeka, Kan., and Clarendon County, S. C.

The appeals were from decisions by lower Federal Courts refusing to strike down segregation. The lower courts cited earlier Supreme Court decisions that segregation is permissible if equal facilities are provided for both races, and that the segregation problem is within discretion of the states in regulating their public schools.

Possible Decisions Listed

The Supreme Court could:

1. Dismiss the appeals on a ground such as lack of constitutional substance in the questions raised. (Dismissal would let the lower court decisions stand unchanged).

2. Affirm the lower court decisions at once, without the usual hearing of arguments.

3. Grant hearings with the intention of making a new decision on the segregation question. A new decision could uphold or strike down segregation. If the court grants new hearings, they will be scheduled some time in the new term which opens next Oct. 6. The decision and explanatory opinions likely would not come before late November, or might even go over into early 1953.

Facilities Declared Equal

In the Topeka case, a special three-judge Federal Court said it had found no material difference in the facilities of the separate Negro and white grade schools of the city. Segregation in Topeka extends only through the sixth grade; junior and senior high schools there are racially integrated.

In the South Carolina case, a special three-judge Federal Court said Clarendon County school officials were complying with its order to equalize facilities "as soon as humanly possible." It said "no good would be accomplished for anyone" by ordering an immediate end to segregation.

The Supreme Court in two decisions announced in June, 1950, banned segregation as then practiced at the Texas and Oklahoma State Universities. Basis of the decisions was that the two universities did not provide equal opportunities to Negroes.

Chief Justice Vinson declared in the university cases that the Constitution's 14th Amendment "precludes differences in treatment by the state based upon race."

HIGH COURT TAKES SEGREGATION ISSUE

Agrees to Hear Public School Cases of South Carolina and Kansas After Summer Recess

By LEWIS WOOD

Special to THE NEW YORK TIMES.

WASHINGTON, June 9—The Supreme Court agreed today to hear arguments on, and presumably decide, the controversial question whether segregation of white and Negro children in elementary public schools was constitutional.

This action was taken through a formal order issued as the court ended its eight-month term and adjourned until October.

In decisions affecting the state universities of Oklahoma and Texas, the Supreme Court already has held that segregation is unlawful unless equal facilities are provided for both races. Up to now, however, there has been no finding on racial separation in elementary and high schools.

Consent to hear arguments on this issue was given when the justices agreed to listen to appeals by Negro parents in two cases concerning schools of Clarendon County, S. C., and Topeka, Kan. Arguments will be heard during the term starting Oct. 6, and there are hopes for a decision late this year or early in 1953.

Carolina Considers Action

The South Carolina case has attracted wide attention, especially as Gov. James F. Byrnes has said his state would abandon its public school system if segregation was outlawed by the Supreme Court. Some other Southern states—Georgia, Virginia and Alabama—are said to be considering a similar program.

The Negro parents bringing the appeal asked the Supreme Court to upset rulings by two special Federal District Courts sitting in Charleston and Topeka.

Segregation in public schools was upheld by the two special courts in view of a historic Supreme Court finding that there was no violation where "separate but equal" facilities were provided.

In the South Carolina case, the appellants contended that the Negro who was "subjected to segregated education is segregated against his will and is forced into ostracism symbolizing inferiority which colors his thoughts and action at almost every moment."

In the Topeka case, a three-judge found the facilities substantially equal; in the South Carolina suit, the court, also having three judges, found the state authorities complying with a degree to equalize facilities "as soon as humanly possible."

Segregation Order Refused

The South Carolina case has been in and out of the Supreme Court for months. In May, 1951, the three-judge court found that the laws had not been violated by segregation, but that facilities for Negro children were inferior. The Charleston court ordered the state authorities to make necessary changes at once.

An appeal was taken to the Supreme Court, but that tribunal returned the matter to the Charleston court for a report on the progress for equal facilities in Clarendon County. In turn, the special court last March reported on progress made, but refused to issue a decree abandoning segregation. From this the Negro parents appealed.

In reporting on changes under way in Clarendon County, the Charleston court said there was "no doubt" that the educational facilities for Negroes would be made equal by the opening of the schools next September.

"No good would be accomplished for anyone by an order disrupting the organization of the schools so near the end of the scholastic year," the court said.

Segregation in the Topeka case is confined to the sixth grade and lower. The junior and senior high schools do not separate the races.

Segregation nvolved In Two Cases

Suits Seek To End Separate School System In South

By International News Service

WASHINGTON — The Supreme Court agreed Monday to review two cases challenging the constitutionality of segregation in public schools.

The cases involve schools in

(Earlier Story on Inside)

South Carolina and Kansas

Eighteen states and the District of Columbia have segregated schools.

A Supreme Court Ruling that separation of white and Negro children is unconstitutional would upset the traditional educational system of the South. South Carolina Governor James Byrnes has warned that his state may abolish public schools rather than send white and colored children to the same classes.

THE TWO CASES which the court agreed to examine challenge segregation in Clarendon County, S. C., and Topeka, Kans.

Both cases were brought to the highest federal tribunal by parents of Negro children who claim segregation deprives them of equal educational facilities and thus violates the constitution.

The South Carolina law under attack requires segregation as long as equal facilities are provided by law.

* * *

THE KANSAS law permits separate grade schools for whites and Negroes in the state's larger cities.

This will be the second Supreme Court review of the South Carolina case.

Last Jan. 28, the court threw out a district court ruling upholding the South Carolina law. It held hearings last March and sent the case back to the lower court which was to consider a report on the state's progress in providing equal school facilities for Negroes.

THE SUPREME court noted in that order that the case could be appealed again after the district court had received its report.

THE FLOWER court declared, that reports filed with it by school officials show progress is being made, but it again directed that facilities be equalized promptly.

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Up To High Court

The United States Supreme Court soon will have to reach a decision.

It must decide whether under the law segregated schools can also be equal schools.

We believe NAACP lawyers, through the testimony of recognized educational experts, proved beyond a reasonable doubt that the "separate but equal" theory is a monstrous lie.

The two recent cases originated in South Carolina and Virginia.

In the South Carolina case, a three-judge Federal Court by 2-1, refused to upset the pattern of jim-crow schools.

But it did, for the first time, place full emphasis on the fact that those States who insist upon separate schools, must be just as insistent that in curriculum and physical plant these schools be equal.

Southern States have thumbed their noses at this phase of the law for the past eighty years.

But the judges in South Carolina firmly held that the State must face up to its responsibility on this score.

It went further, ordering State officials to report all progress made within a six months' period.

A three-judge Federal court in Virginia chose to temporize with the issue. Their decision showed tender sympathy for Southern "traditions and mores" which they were extra careful not to offend.

Unlike the jurists in South Carolina, they placed no specific deadline which Virginia must meet in making elementary schools equal for all of its children.

They fell back on the meaningless phrase that this equality must "come with all reasonable diligence and dispatch."

Spelling out what is "reasonable diligence and dispatch" is carelessly left in the hands of the very State officials whose administration brought about the wide disparity between colored and white schools throughout Virginia.

It is clear now that it is up to the Supreme Court to grant the relief so sorely needed.

The fact that our high tribunal has hewed to a straight line in knocking out the "separate but equal" myth in professional and graduate schools, augurs well that it will not deviate from this sound reasoning on the equally important public school level.

S. Carolina School Segregation Upheld

CHARLESTON, S. C., March 13. (AP)—A three-judge federal court ruled again Thursday, in effect that racial segregation in South Carolina's public schools does not violate the United States Constitution.

The court, hearing the case for a second time after it was returned by the U. S. Supreme Court early this year, handed down an almost identical ruling to that of last June 23 when the case was first decided on a 2-1 decision. Thursday's ruling was unanimous.

In a decree filed in U. S. District Court here, the court denied a request for an injunction abolishing segregation in the state's public schools but it reiterated an order directing the equalization of educational facilities in rural Clarendon County, where the case originated on action by Negro parents.

The court said school officials have acted promptly to equalize facilities and will complete the job by next fall.

The opinion was handed down by Judge John J. Parker of Charlotte, N. C., senior judge of the U. S. Fourth Circuit Court of Appeals. It was concurred in by circuit judge A. M. Dobie of Charlottesville, Va., and district judge George Bell Timmerman of Columbia.

Last June's decree was appealed to the Supreme Court by the National Association for the Advancement of Colored People. While the case was pending, Clarendon school officials filed a report saying they were attempting to equalize facilities as directed by the court. The three-judge district court then forwarded the report to the Supreme court without action.

The Supreme Court returned the case to the district court in January, directing it to reopen the case in "the light of the (equalization) report." The court then reheard the case at Columbia March 3.

...inds No Racial Bias ...n N. C. High Schools

RICHMOND, Va. (NNPA) — The United States Fourth Circuit Court of Appeals here last Tuesday found no racial discrimination to exist in high school facilities provided for colored children in Washington County, North Carolina, and those furnished white pupils there.

The appellate court upheld the decision of the District Court that a proposed plan to consolidate high school facilities for colored students in Washington County was not discriminatory.

An appeal had been taken to the circuit court on the ground that discrimination existed. Plaintiffs in whose behalf the appeal was filed were Wilmer and Rixie Winborne, children of A. R. Winborne, of Washington County.

The suit, brought through the children's father, sought a permanent injunction on the ground that colored pupils in the county were discriminated against in violation of the Federal Constitution by the denial of facilities equal to those afforded white pupils.

The Washington County School board said a program for improving the schools in the county was being undertaken. The first step, the board said, was the consolidation of three colored high schools in a building of modern construction centrally located in the county.

It was contended that this consolidation and the new building were in accord with modern educational standards and would furnish better facilities for colored students than are afforded the whites. The board said a similar consolidation for white high school students was contemplated as soon as funds were available.

The court's opinion written by Judge Armistead M. Dobie, said: "We do not gainsay the substantial equality requirement of the Fourteenth Amendment and our readiness, in case of noncompliance, to strike down the discriminatory treatment. But a consideration of all the evidence here compels our acceptance of a finding of no discrimination. The judgment of the District Court is affirmed."

Houston Links Ruled Open to Negro Golfers

NEW ORLEANS, Dec. 20—(AP). The U. S. Fifth Circuit Court of Appeals held Thursday that Houston, Texas, must open its municipal golf links to Negroes, but the decision permits segregation.

It granted the city "a reasonable opportunity to promptly prepare and put into effect regulations for the use of the municipal golf facilities, which, while preserving segregation, will be in full and fair accord" with this principle:

"That 'the admissability of laws separating the races in the enjoyment of privileges afforded by the state' rests wholly upon the equality of the privileges which the laws give to the separated groups within the state."

It further ordered that "in applying this principle, that equality of treatment of white and colored citizens must be afforded which will secure to both, complete and full recognition, that, under the constitution and laws, there are not two classes of citizens, a first and a second, but one class, with all equal rank in respect to their rights and privileges to use and enjoy facilities provided at public expense for public use."

Most Important Decision On Political Rights

BY DR. ROBERT H. BRISBANE

In June 1944, the United States Supreme Court handed down the most important decision on Negro political rights in this century. This was the famous Smith vs Allwright decision and in it the court ruled that Negroes could not any longer be barred from participating in the primary elections of any political party. Actually, however, the decision had the effect of re-enfranchising the Southern Negro after a blackout of almost 50 years. Indeed, from 1890 to 1900 every Southern State adopted laws which in effect put the Negro into a political deep freeze. After 1944, however, the number of Southern Negroes voting rose from a mere handful to well over the million mark and the number as of 1950 was still swelling.

As a whole, the Negro in the South is politically conscious and realizes that his stake in the community depends to a large extent on his political activity. Experts on the Southern Negro vote, however, agree on onen thing and that is that the Negro does not place sufficient emphasis on the necessary preliminary for voting — Registration. This was demonstrated quite recently in Atlanta when it was revealed that there has been an important drop in the number of Negro citizens registering in this city. Now for the Colored citizens of Atlanta this type of laxity is indeed inexcusable. Negroes in Atlanta are rated the most progressive and advanced in the entire South and are looked up to by colored citizens in neighboring states. Far from losing interest in the vote the Atlanta Negro should set the pace for the entire South. A drop in registration means a drop in votes and a drop in votes means a weakening of your political power.

There is a definite connection between the number of votes you cast and the civic improvements, police protection, etc., that you receive from the government. As stated by an old line politician in New York Tammany Hall—"The vote is the pay off." You can't vote if you do not register.

Equal Schools Are Near For Negroes, Court Told

South Carolina District Reports Effort To Comply With Degree

CHARLESTON, S. C., Dec. 20—(AP)—Clarendon County school district No. 1 reported to a three-judge U. S. court here Thursday that it was doing its dead level best to equalize white and Negro facilities—including buildings, curricula and teaching staffs—in compliance with the court's decree dated June 21 which told the district it must do all these things in order to maintain separate schools for the two races.

Specifically, the court was told that the district planned to spend $552,682.95 on brand-new school plants, that one such plant was under construction, and that by the start of the 1952-53 school year it hoped to have all its 2,568 Negro children in modern school buildings which will "certainly be the equal" of any in the county.

Attorney Robert McC. Figg Jr. of Charleston and Attorney S. E. Rogers of Summerton, representing the defendant trustees in the suit brought last winter by the National Association for the Advancement of Colored People, filed their "progress report" one day in advance of the time fixed by the decree, which allowed them six months.

Four copies were filed: One for the trial record here; one each for Judge John J. Parker of Richmond and Charlotte, chief judge of the U. S. Court of Appeals, Fourth Judicial Circuit, and for District Judges George Bell Timmerman of Batesburg and J. Waties Waring of Charleston.

Judges Parker and Timmerman concurred in the June 21 decree, which held that segregation of the races in grade schools was permissible under the 14th amendment to the U. S. Constitution, but that where the races are schooled separately facilities must be equal in all respects.

Judge Waring filed a separate opinion in which he held that segregation was "per se inequality."

There were no indications Thursday as to the next step in the nationally-important case, which the NAACP said frankly was designed to smash "the syste segregation in grade schools.

Currently, the NAACP ha pealed the decree to the Su Court of the United States, which has not indicated if it will take jurisdiction. Some persons close to the case seem to believe that perhaps the Supreme Court has been waiting for Thursday's report—which in a sense completes the record—before making up its mind. But that is all conjecture. The high court has said nothing.

Va. NAACP To Take Jimcrow Schools Case To Supreme Court

By Carter Jewel

RICHMOND, Va. — (ANP)— Charging that there are four errors in the three judge court's opinion upholding the Virginia constitution and code requiring segregation in the public schools, the National Association for the Advancement of Colored People is appealing that ruling to the United States Supreme Court.

The case originated from Prince Edward county, Va., as the outcome of a strike of pupils of the Moton High school last spring in Farmville, Va. in protest against inferior school facilities. The parents and children later asked the court through NAACP lawyers to grant an injunction forcing the county school officials to admit them to white schools.

The high court will be asked to settle the school segregation "once and for all," according to the appeal order presented to and signed by Federal District Court Judge Sterling. Hutcheson was a member of the three-judge court that ruled against the Negroes.

The appeal was initiated by Sportswood W. Robinson III, and more than 100 parents of Prince Edward county.

Robinson, head of the trio of lawyers in the NAACP fight to have Virginia's segregated school laws held invalid, said last week that the three-judge decision should be reviewed and reversed on the grounds that the district court erred.

"(1) In refusing to enjoin enforcement of the school segergation laws on the grounds that laws violate rights secured under the due process and equal protection clause of the Fourteenth Amendment to the United States Constitution.

"(2) In refusing to restrain the Prince Edward county school board from using race as a faster in determining the assignment of school space when the court on its own finding declared that equal facilities were not provided Negro students.

"(3) In declining to hold that the Negro high school students were entitled to equality under the Fourteenth Amendment in all aspects of the educational program addition to equality in physical facilities and curricula.

"(4) In issuing a decree ordering the school board to equalize the Negro school facilities in the county since such a decree cannot be effectively enforced without involving the court in the daily operation of public schools in the county."

The controversial segregation issue was argued at some length last March by NAACP counsels and attorneys for the state and Prince Edward county. Hearing the arguments in addition to Judge Hutcheson were Judges Armistead M. Dobie, of the Circuit Court of Appeals, and Albert V. Bryan of Alexandria.

Supreme Court To Act On Segregated Schools

WASHINGTON—The United States Supreme Court has agreed to hear the Clarendon County, S. C., and Topeka, Kans., school cases this fall and to state whether segregation in elementary public schools shall continue. Last year the court refused to hear the South Carolina case and returned it to a lower court for a second hearing.

In an appeal filed May 10 Negro parents claim "On occasion, courts have denied that enforced segregation of Negroes in American life is a badge of inferiority, thus closing their eyes as judges to what they must know as men." They further contend that public school segregation has a bad effect on their children and violates the equal protection clause of the Constitution.

ALL CITIES AFFECTED

Outcome of the case is expected to affect segregated school systems throughout the country though the appeals refer only to Clarendon County, S. C., and Topeka, Kans.

The court consented to hear arguments in the case when the new term begins October 6. Its decision is not expected until late this year or early 1953.

The Clarendon County appeal was filed by National Association for the Advancement of Colored People attorneys Thurgood Marshall, Robert L. Carter, Harold R. Boulware and Spottswood W. Robinson.

HEARD IN 1951

The case was first heard in May, 1951, by a special three-judge federal court. By a 2-1 vote the court upheld public school segregation in South Carolina. However, the lone dissent of Judge J. Waties Waring was widely applauded.

12d 1952

Sues Cab Co. For $100,000

Largest Suit Of Kind Ever Filed In NYC

NEW YORK—A 55-year-old widow, through her attorney, filed a $100,000 damage suit against a Harlem taxi company here in New York County Supreme Court Wednesday—the largest suit of its kind ever filed, according to court attaches.

Mrs. Esther Johnson, of 74 E. 99th St., filed the suit against the Freckles Taxi Co. of 707 Lenox Ave. as a result of an accident she was involved in one of the company's cabs last June 14.

According to Harry H. Lipsig of 20 Vesey St., counsel for Mrs. Johnson, the accident occurred around 11:45 p.m. at the corner of E. 106th St. and Fifth Ave., shortly after Mrs. Johnson had engaged the taxi. The driver isn't named in the suit.

Says Spine Was Broken

The Freckles Co. is one of the oldest cab companies in Harlem. Located on Lenox Ave. between 145-146th Sts. next to the Lenox Ave. bus barns, over 30 cabs are said to be running for the corporation.

Mrs. Johnson, a baker at Gimbel's Department Store, charges that the night she was injured the cab in which she was riding made a sudden stop and threw her to the floor, knocking her unconscious and causing her to bleed.

Hospitalized 40 Days

She says she was taken to Mt. Sinai Hospital for emergency treatment and X-rays taken there showed she suffered a fractured spine.

Later, according to Mrs. Johnson, she was transferred to Metropolitan Hospital on Welfare Island and from there to Manhattan General Hospital. In all, she says she was confined to the hospital for a total of 40 days.

Mrs. Johnson claims the injuries she received in the accident are permanent.

Supreme Court Rules Coercion By Stomach Pump Unconstitutional

In an 8-0 decision, the United States Supreme Court ruled this week that the use of evidence obtained through forcible use of a stomach pump on defendants, in a state criminal trial, was barred by the due process clause of the Fourteenth Amendment.

The defendant, Antonio Richard Rockin, had swallowed two capsules while being arrested. The police, unable to extract the capsules from his mouth, had a doctor force an emetic into his stomach through a tube. This "stomach pumping" produced vomiting. Morphine contained in the capsules thus recovered were used in Rochin's trial for possession of narcotics. The Supreme Court of California declined to review the case. Counsel for ACLU's Southern California affiliate, A. L. Wirin, argued the case before the U.S. Supreme Court, and the national ACLU filed a "friend of the Court" brief contending "the due process guarantee of the Fourteenth Amendment prohibits acquisition of evidence by means used on petitioner."

Mr. Justice Frankfurter, writing the court's opinion, held that the due process clause enables the court to nullify any state conviction obtained by procedures that shock the conscience, offend a sense of justice, or run counter to certain decencies of civilized conduct. The conduct of the police here was just such conduct. "These are methods too close to the rack and the screw to permit of constitutional differentiation to sanction the brutal conduct.. would be to afford brutality the cloak of law. Nothing would be more calculated to discredit law and thereby to brutalize the temper of society."

In two separate concurring opinions, Justices Black and Douglas protested the grounds of decision, claiming that the conviction should have been reversed because the extraction of incriminating evidence here violates the Fifth Amendment provision against self-incrimination. Noting that the majority of the court disagrees and feels that the Fifth Amendment imposes no restraint on the states but only on the federal government, Mr. Justice Black nevertheless contended that "the nebulous standards" used by the majority would inevitably imperil all the individual liberty safeguards enumerated in the Bill of Rights." Mr. Justice Douglas claimed that the use of the evidence here obtained would not violate "decencies of civilized conduct", but that self-incrimination being a standard of due process for a trial in a federal court house, it must also be for a trial in a state court house.

Virginia School Segregation Suit Reaches Supreme Court

Court Agrees Schools Inferior But Upholds State Constitution

WASHINGTON, May 9 - - The suit to end segregation in the public elementary and high schools of Prince Edward County, Virginia, is on its way to the United States Supreme Court this week as attorneys for the National Association for the Advancement of Colored People filed an appeal with the high court. The appeal seeks reversal of a lower court decision which refused to declare Virginia's school segregation laws unconstitutional.

The trial of this most comprehensive education suit brought by NAACP lawyers was held before Richmond, February 22-29. In its decision, handed down on March 7, the court agreed that the segregated Negro high school was inferior to the white high schools with respect to curricula, building facilities, and means of transportation, but refused to hold that Negro children could not be forced to attend this school. Instead it upheld the constitutionality of segregation in the school system, and ordered that white and Negro schools be equalized.

In their appeal, NAACP attorneys argue that the decision was erroneous in that equal educational opportunities involve more than mere parity in physical facilities and curricula. They also require equality in every educational factor significant to the development of mind and character, the appeal states, and this kind of equality can not be had within the framework of segregation.

An outstanding group of expert witnesses from the fields of psychology, psychiatry, sociology, anthropology, education and statistics testified for the NAACP at the trial. On the last afternoon, the plaintiffs presented four rebuttals made by witnesses for the state. One of these, a statistician, gave evidence to demonstrate that at the rate of equalization proposed by Virginia, facilities for Negro children could not be brought to the level of those provided white children until 1979.

Those people who were in testimony for the NAACP in the case include Dr. M. Brewster, Department of Psychology, Vassar college; Dr. Kenneth Clark and Dr. Mamie Clark, Northside Center for Child Development, N. Y.; Dr. John J. Brooks, director of the New Lincoln School, N.Y.; Dr. Isidore Chein, Committee on Com- Jewish Congress; Dr. Elsa Robinson, New York University; Dr. H. B. English, Ohio State University; and Dr. Alfred McClung Lee, of Brooklyn College.

Attorneys in the case are Spottswood W. Robinson III and Oliver W. Hill of Richmond, and Special assistant Special Counsel Robert L Carter of the national office legal Jack Greenberg, James M. Nabrit and James B. Weinstein were of counsel.

Loyal Demos win another victory over Dixiecrats

BY FRED TAYLOR
News staff writer

Alabama's Democratic regulars today had won another—and the final—legal battle in drawn-out litigation with Dixiecrats.

The Alabama Supreme Court ruled that the State Democratic Executive Committee had full authority to seat four party regulars from the Third District.

These four—Neil Davis, Jack Bridges, W. L. Horn and G. C. Hughes—polled majority votes for state committee places in the 1950 primary. And they were certified as elected by the state committee chairman, who at that time was Mobile's Gessner T. McCorvey.

BUT ELECTION CONTESTS were filed by Dixiecrats and a five-member subcommittee composed of four Dixiecrats and one party regular was appointed to investigate charges of "fraud" in balloting.

This subcommittee, headed by Dixiecrat H. M. Abercrombie, as chairman, kicked out the four party regulars and replaced them with a quartet of Dixiecrats—Grover W. Ray, O. C. Prather, Yetta Samford and H. Glenn Hawkins.

But even so, Democratic regulars won a decisive majority on the state committee in the 1950 primaries. And when the new committee met at Montgomery on Jan. 15, 1951, it ousted the Dixiecrats and seated the four men who originally had been certified as elected. It did this by a 40 to 19 vote.

* * *

IN ITS RULING, the Supreme Court said "We think it was within the province of the full committee to, in effect, examine the credentials of the contesting groups and accept one and reject the other."

In so ruling, the high court upheld a decision by Judges J. Russell McElroy and Whit Windham in favor of Chairman Ben Ray and the majority membership of the new state committee.

Judges Windham and McElroy had ruled in Jefferson Circuit Court against William S. Pritchard and Victor Smith, Birmingham attorneys for the Dixiecrat quartet. They had filed declaratory judgment and mandamus proceedings seeking to oust the party regulars and re-seat the States' Righters.

Successful in resisting this litigation were Harold M. Cook, Birmingham attorney; John Godbold, Montgomery lawyer, and Roy L. Smith, Phenix City attorney.

CHAIRMAN BEN RAY expressed gratification over the Alabama high court ruling, pointing out that the party regulars had won in Circuit Court here, in the state high tribunal and in the U. S. Supreme Court in prolonged litigation with Dixiecrats.

"There must be somebody to lay down the rules, and the Legislature delegated this authority to the state committee," said Ray. "The Alabama Supreme Court has so ruled, in showing it has no disposition to become the executive committee for any party or political group.

"The majority now on the state committee has no desire to crow over this victory. But they are gratified that the law has been made clear and the action of the committee vindicated."

Swing Back To The Right Reflected

Decisions Covering Eight-Year Period Brought To Review

(See Editorial on Page 14)

WASHINGTON, D. C.—NNPA)—An analysis of actions taken by members of the United States Supreme Court in cases affecting civil rights, in the current and past terms, reflecting a swing back to the right, shows:

MIAMI, FLORIDA, golf-course segregation and discrimination case. The court refused to review the judgment of the Florida Supreme Court upholding rule that colored golfers may use course only one day a week. Justices Hugo L. Black and William O. Douglas dissented. Chief Justice Fred M. Vinson and Associate Justices Stanley F. Reed, Felix Frankfurter, Robert H. Jackson, Harold H. Burton, Tom C. Clark and Sherman Minto voted against review.

MARCH 3, 1952. Court ordered Federal District Court at Knoxville to dismiss a suit attacking the constitutionality of the Tennessee law requiring segregated education on the ground that the case was moot because the University of Tennessee agreed to admit four colored petitioners. No dissent.

* * *

JAN. 28, 1952. The court remanded the Clarendon County, S. C., school segregation case, attacking the state constitutional and statutory provisions requiring separate schools, to give the District Court an opportunity to act on a report it had ordered filed showing what steps have been taken since June 21, 1951, to equalize schools.

Justices Black and Douglas dissented, stating that "They believe that the additional facts contained in the report to the District Court are wholly irrelevant to the constitutional questions presented by the appeal to this court and that we should note jurisdiction and set the case down for argument."

* * *

DEC. 11, 1951. Court continued on its docket a petition for a writ of mandamus to direct the convening of a three-judge court to hear and determine a suit attacking the constitutionality of segregated schools in the District of Columbia until the District of Columbia Court of Appeals passes upon an appeal from the judgment of the District Court dismissing the complaint. Justice Douglas dissented.

Between October, 1950, and June, 1951, there were no segregation cases in which written opinions were rendered. On other civil rights maters, there were two favorable and two unfavorable decisions. The rape convictions growing out of the Groveland, Florida, riots were upset because of exclusion of colored persons in the selection of the jury.

* * *

JUNE 5, 1950. Chief Justice Vinson delivered the unanimous opinion of the court in the Heman Marion Sweatt case, holding that Sweatt could not obtain a legal education in a separate law school equivalent to that afforded white students at the University of Texas Law School and that Sweatt should be admitted to the latter law school.

On the same day Justice Vinson delivered the unanimous opinion of the court that the University of Oklahoma, having admitted G. W. McLaurin to its Graduate School, could not subject him to racial discrimination.

On the same day Justice Burton delivered the unanimous opinion of the court that the rules and practices of the Southern Railway, setting aside one table exclusively for colored passengers and reserving the other ten tables in its dining cars exclusively for white passengers, and curtaining and petioning off the table for colored passengers, violated the Interstate Commerce Act forbidding undue or unreasonable prejudice This appeal was brought by Elmer W. Henderson.

* * *

MAY 3, 1948. Justice Vinson delivered the unanimous opinion of the court in cases arising in St Louis and Detroit, holding that racial restrictive covenants cannot be judicially enforced. He also delivered on the same day the opinion of the court in a case arising in the District of Columbia that it is inconsistent with the policy of the United States for federal courts to enforce such covenants.

Justices Reed, Jackson and Rutledge took no part in the consideration of these cases because they either owned or were living in property covered by such covenants. Justice Frankfurter wrote a separate concurring opinion in the District of Columbia case.

* * *

FEBRUARY 16, 1948. The court denied a motion for leave to file a petition for a writ of mandamus in the case of Ada Lois Sipuel Fisher to compel Oklahoma courts to compel compliance with the mandate of the Supreme Court by ordering her admission to the University of Oklahoma Law School.

The late Justice Frank Murphy was of the opinion that a hearing should have been ordered to determine whether the action of the Oklahoma court constituted an evasion of the mandate.

Justice Rutledge dissented. He held that "no separate law school could be established overnight capable of giving petitioner a legal education equal to that afforded by the state's long-established and well-known state university law school.

* * *

JUNE 3, 1946. Justice Reed delivered the opinion of the court in the case of Irene Morgan, striking down a Virginia statute requiring all buses, both intrastate and interstate, to segregate white and colored passengers because it placed an undue burden on interstate commerce.

Justice Rutledge concurred in the result. Justice Jackson took no part in the consideration of decision of the case. Justices Black and Frankfurter wrote separate concurring opinions. Justice Burton wrote a dissenting opinion.

JUNE 18, 1944. The late Chief Justice Harlan F. Stone delivered the opinions of the court in the Steel and Tunstall cases, holding that the Railway Labor Act imposes on a labor organization, acting as the exclusive bargaining representative of a craft or class of railway employees, the duty to represent all the employees in the craft without racial discrimination. Justice Murphy concurred in the result.

* * *

APRIL 3, 1944. Justice Reed delivered the opinion of the court, reversing earlier decisions and holding that colored voters may not legally be excluded from voting in white Democratic primaries. This was the case of Lonnie E. Smith against election officials of Harris County, Texas. Justice Frankfurter concurred in the result. Justice Owen J. Roberts, retired, dissented.

* * *

APRIL 28, 1941. The late Chief Justice Charles Evans Hughes delivered the opinion of the court in the case of former Representative Arthur W. Mitchell, holding that colored persons who buy first-class tickets for railroad travel must be furnished with accommodations equal in comfort and convenience to those afforded to first-class white passengers.

* * *

DECEMBER 12, 1938. The late Chief Justice Hughes delivered the opinion of the court in the Lloyd Gaines case, holding that the State of Missouri was bound to furnish Gaines within its borders facilities for legal education substantially equal to those which the State there afforded for white persons, whether or not other colored persons sought the same opportunity. The late Justice James C. McReynolds wrote a dissenting opinion in which he said:

"For a long time Missouri has acted upon the view that the best interest of her people demands separation of whites and Negroes in schools. Under the opinion just announced, I presume she may abandon her law school and thereby disadvantage her white citizens without improving petitioner's opportunities for legal instruction; or she may break down the settled practice concerning separate schools and thereby, as indicated by experience, damnify both races. Whether by some other course it may be possible for her to avoid condemnation is matter for conjecture."

The late Justice Pierce Butler concurred in the dissenting views of Justice McReynolds.

12d 1952

Seek Final Ruling On Jim Crow Education

By LOUIS LAUTIER

WASHINGTON, D. C. (NNPA)—The NAACP last Friday tossed back to the United States Supreme court the hot issue of racial segregation in public elementary and high schools.

It filed on behalf of colored children of Clarendon country, S. C., and their parents and guardians an appeal from the second decision of the three-judge Federal District Court at Charleston refusing to enjoin South Carolina's "Jim Crow" laws requiring such segregation.

This is the second time this case has been brought to the Supreme court. On the first appeal the high tribunal vacated the judgement of the District court, and remanded the case to that court in order that the Supreme court might have the benefit of the views of the District court upon additional facts contained in a progress report on equalization of the colored schools with those for white pupils.

At the time it entered its first decree June 21, 1951, the District court ordered Clarendon County school officials to report to that court within six months as to the action taken by them to carry out the court's order to proceed at once to furnish educational facilities for colored pupils equal to those furnished white pupils.

While the first appeal was pending but before the Supreme Court heard arguments, Clarendon County school officials filed the progress report in the District Court as ordered, and the District Court entered an order stating that it would withhold further action while the first appeal was pending in the Supreme Court.

The Supreme Court, in a 7 to 2 decision, took the position that it should have the benefit of the views of the District Court upon the addtional facts prior to consideration of the case.

Justices Hugo L. Black and William O. Douglas dissented to the action of the court vacating the judgement of the District Court. They said the additional facts contained in the report to the District Court were wholly irrelevant to the constitutional questions presented by the appeal. They wanted the case set down for argument.

As soon as the mandate of the Supreme Court reached the District Court, NAACP attorneys filed a motion for judgement, requesting an early hearing and a final judgement granting a new trial.

The District Court held a second hearing last March 3, when the Clarendon County School officials filed an additional report showing the progress made since the first report was filed. NAACP attorneys raised no questions concerning the accuracy of the reports as to the physical changes being made in the schools.

At the second hearing the District Court held that the question of the validity of South Carolina's "Jim Crow school laws was closed by the original judgment and could not be argued at that hearing.

The District Court also refused to rule that, aside from the validity of these laws, the admitted lack of equality of facilities entitled the plaintiffs (colored school children, their parents and guardians) to an injunction restraining school officials from excluding them from an opportunity to share the superior schools and the inferior schools on an equal basis without regard to race or color.

The District Court last March 13 again held that the educational facilities for colored pupils in Clarendon County were not substantially equal to those afforded white pupils. Despite this finding the court again held that the plaintiffs were not entitled to an injunction in the public schools of Clarendon County. From that decision, NAACP attorneys appealed.

Important Court Rulinas

The Supreme Court's ruling on the steel seizure last Monday was the big news story of the day. But other matters of considerable importance were also decided at the same session of the court.

One ruling refused to interfere with two executions. Oscar Collazo is the Puerto Rican who killed a Washington policeman guarding Blair House at a time when Collazo, with another would-be assassin, tried to murder President Truman. Now only executive clemency can save Collazo's life. Presumably Mr. Truman bears no personal ill-will toward the man who would have killed him if he could, but it seems extremely doubtful that he will interfere with the death sentence. Truman has often spoken with sorrow of the fact that a man lost his life guarding the president's temporary residence.

The other man who will also be executed unless saved by presidential action is a Nisei convicted of treason because he mistreated American prisoners of war in a Japanese prison camp. Tomoya Kawakita, born in this country, served in the Japanese Army, came back here after the war, was recognized by a victim of his cruelty, was then arrested, tried and convicted. If he dies as a result, he will be the first United States citizen ever executed for treason alone. A few others, notably John Brown of Harper's Ferry fame, were executed for treason plus another crime; in Brown's case it was murder. It seems likely that this vicious man will pay with his life for his cruelty.

A third, and very important, decision held that a city ordinance of Marshall, Tex., is unconstitutional. It banned the exhibition of films "of immoral character or of such character as to be prejudicial to the best interest of the people of the city." The law was held unconstitutional "on the score of indefiniteness."

It will be remembered that just a week previously the court had ruled that states may not ban films on the ground they are sacrilegious. That ruling concerned a picture called "The Miracle" which Catholics had protested. It was held that because a film may seem sacrilegious to communicants of one religious denomination does not mean its exhibition by others who do not so regard it should be banned.

The ruling of last Monday pertained to the film "Pinky," which showed the troubles of a light-skinned Negro girl on her return to the South from a Northern city in which she had "passed" as white. At one time Birmingham's chief of police refused to permit its showing here, holding it was likely to inflame racial feelings and was offensive to good taste. Many thousands of persons in the South had found "Pinky" inoffensive, indeed had regarded it as intelligently done and in good taste. Under the Supreme Court ruling such a controversial film cannot be kept from the screen under an ordinance merely holding it to be "of immoral character or prejudicial to the best interest of the people."

Censors Slapped

The Supreme Court in two successive opinions has slapped down blue-nosed censors of motion pictures.

The court held that the constitutional guarantees of free speech and free press are broad enough to cover the movies as well.

Its action lifted New York's ban on the Italian - made picture, "The Miracle." Catholics had objected to the picture on the ground that it was sacrilegious.

In the second case, a Marshall (Texas) city ordinance was declared unconstitutional.

The law permitted censors to ban movies "of an immoral character, or of such character as to be prejudicial to the best interests of the people of the city."

Marshall's censors under this law forbid the showing of "Pinky," a film in which a white man implores a colored girl to become his wife.

This, to the Texas blue-pencil board, was "prejudical to the best interests of the people of the city."

In simpler language, the film was banned because its theme ran counter to the rigid segregation policies of Marshall and dignified the relationship between interracial couples (not uncommon in Texas) with the sanctity of marriage.

The court's opinions, we hope, will give pause to the rabidly racist censoring of aging Leslie Binford in Memphis. There he has banned all pictures in which a tan face appears. Even the old Our Gang comedies were ruled objectionable.

Both are welcome decisions. They will be hailed by all Americans who genuinely cherish the hard-won freedoms so clearly outlined in the United States Constitution.

Top Court Rules Out Rail Bias

WASHINGTON—The notoriously biased Brotherhood of Railway Trainmen came to grips with the Railway Labor Act here last week and found out that jobs already held by colored workers could not be destroyed in order to give white men jobs.

The match was refereed by the United States Supreme Court who voted 6-3 that the decision was against the rail unions. The case involved an arrangement between the St. Louis-San Francisco Railway and the trainmen's brotherhood, which, according to Justice Hugo L. Black, threatened Negro porters "with loss of their jobs because they are not white, and for no other reason."

In voting "no," Justice Sherman Minton declared that he did not understand that private parties, such as a union and a railroad, could be prevented from discriminating on racial grounds. His trend of thought was joined by Justice Stanley Reed and Chief Justice Fred M. Vinson.

Justice Black claimed that the brotherhood long had made efforts to replace Negroes with whites who, unlike Negroes, could join the union. The high court ruling returned the case to a lower court for subsequent proceedings.

High Tribunal Says Courts Have Power To Protect Jobs

WASHINGTON, D. C.—(NNPA)—The United States Supreme Court, in a 6-to-3 decision, ruled last Monday that the courts have power to protect colored railroad workers from loss of their jobs under compulsion of a bargaining agreement, which, to avoid a strike, the railroad made with an exclusively whiteman's union.

Justice Hugo L. Black delivered the opinion in the case of Simon L. Howard, Sr., an employee of the St. Louis-San Francisco Railway Company for nearly 40 years, who brought a class suit on behalf of himself and other train porters of that railroad.

The court divided in this case exactly as it did in the 6-to-3 decision that President Truman acted illegally in seizing the steel plants. The justices who voted to uphold the decision of the United States Court of Appeals at St. Louis were, in addition to Justice Black, Felix Frankfurter, William O. Douglas, Robert H. Jackson, Harold H. Burton and Tom C. Clark.

DISSENTING

Dissenting were Chief Justice Fred M. Vinson, Stanley F. Reed and Sherman Minton. Justice Minton delivered the dissenting opinion.

Bargaining agents who enjoy the advantages of the Railway Labor Act's provisions must execute their trust without lawless invasions of the right of other workers,' Justice Black declared, adding:

"We agree with the Court of Appeals that the District Court had jurisdiction to protect these workers from the racial discrimination practiced against them."

Howard originally brought suit to enjoin the Frisco and the Brotherhood of Railroad Trainmen from abolishing the "train porter" jobs and from hiring white brakemen to replace them pursuant to an agreement of March 7, 1946, between the Frisco and the BRT.

ALL DUTIES

Colored employees of the Frisco called "train porters" actually performed all the duties of white "brakemen." The BRT, bargaining representative of "Brakemen" under the Railway Labor Act, had for years used its influence in an attempt to eliminate colored trainmen and get their jobs for white men who, unlike colored "train porters,' were or could be members of the BRT.

By the agreement of March 7, 1946, the BRT finally forced the Frisco to agree to discharge the colorer "train porters" and fill their jobs with white men who, under the agreement, would do less work but get more pay.

Under this agreement, effective April 1, 1946, Howard and other "train porters" were personally notified to turn in their switch keys, lanterns, markers and other brakemen's equipment, and notices of job vacancies were posted to be bid in by white brakemen only.

RAILWAY LABOR ACT

The District Court held that the complaint raised questions which Congress by the Railway Labor Act had made subject to the exclusive jurisdiction of the National Mediation Board and the National Railroad Adjustment Board.

The District Court, however, enjoined the Friscoe from abolishing the position of "train porter" under the notices given, on the ground that these notices were insufficient to meet the requirements of the Railway Labor Act.

The Court of Appeals, in an unanimous opinion, affirmed the decree of the trial court with respect to the invalidity of the notices, but held that the agreement of March 7, 1946, was an "attempted predatory appropriation" of the "train porters" jobs, which was to this extent illegal and unenforceable.

It ordered the railroad to keep the "train porters' as employees, and permitted the railroad and the brotherhood to treat the agreement as valid on condition that the raiload would recognize the colored "train porters' as members of the craft of "brakemen" and that the BRT would fairly represent them as such.

The majority opinion pointed out that the "train porters are threatened with loss of their jobs because they are not white and for no other reason. The jobs they did hold under its old name would be abolished by the agreement; their color alone would disqualify them for the old job under its new name."

UNLAWFUL USE OF POWER

Justice Black said the Railway Labor Act "prohibits bargaining agents it authorizes from using their position and power to destroy colored workers' jobs in order to bestow them on white workers. And courts can protect those threatened by such a unlawful use of power granted by a federal act."

In his dissenting opinion Justice Minton criticized the majority for reaching out "to invalidate the contract, not because the train porters are brakemen entitled to fair repesentation by the Brotherhood, but because they are Negroes who were discriminated against by the carrier at the behest of the Brotherhood.

"I do not understand that private parties such as the carrier and the Brotherhood may not discriminate on the ground of race," said Justice Minton, adding:

"Neither a state government nor the Federal Government may do so, but I know of no applicable federal law which says that private parties may not.

That is the whole problem underlying the proposed federal Fair Employment Practices Code."

He said the Supreme Court "by sheer power" can lay down a code of fair employment practices. "But sheer power is not a substitute for legality. I do not have to agree with the discrimination here indulged in to question the legality of today's (June 9) decision."

He concluded that the dispute was a matter to be resolved by the National Mediation Board, not the courts.

The suit was brought at the instances of the Association of Colored Railway Trainmen and Locomotive Firemen of which S. N. Clark, of Roanoke, Va., a brakeman for the Norfolk and Western Railway is president. Attorneys for Howard were Joseph C. Waddy of Washington, D. C. and Victor Packman and Henry D. Espy of St. Louis. On the brief for Howard also was William C. Gardner of Washington.

Segregation Issue Deferred By High Court

December Hearing To Include Virginia

WASHINGTON, Oct. 9—(AP)—The Supreme Court today put off until December 8 arguments on the constitutionality of segregation of Negro and white children in public schools.

The postponement means the issue cannot be decided before the general election on November 4. Previously, the court had scheduled arguments for October 14-15.

In deferring action, the court also lumped together arguments on four separate cases involving the touchy racial question.

The October arguments were to be on two appeals involving racial segregation in public schools in South Carolina and Topeka, Kans. In announcing the deferment today the high court also granted a hearing on a third appeal, this one involving segregation of Negro children in Virginia schools.

The court also said it would be willing to hear an appeal involving segregation of school children in the District of Columbia. This case is now pending in the United States Court of Appeals for the district.

All Four at Once

The Supreme Court said all four segregation cases would be heard at one time, in a session beginning December 8. Two days probably will be devoted to the arguments.

In the District of Columbia case, segregation is required by act of Congress. In the other three cases, segregation is provided by State laws.

The order announcing the changed hearing arrangements noted that "the court is of the opinion that the nature of the issue posed in those appeals now before the court involving the fourteenth amendment, and also the effect of any decision which it may render in those cases, is such that it would be well to consider, simultaneously, the constitutional issue posed in the District of Columbia case."

Justice Douglas dissented on the postponement of the arguments from October to December.

If the court had heard arguments as scheduled next week it could have given a speeded-up decision in another week or two. While this was not expected, today's action makes certain that the issue will not be decided before the presidential election.

In all four cases, lower courts so far have upheld segregation laws although insisting educational facilities should be equal.

12d 1952

Train Porters

Slaps Down Biased Union, Railroad Agreement That Switched Jobs To Whites

WASHINGTON — (NNPA) — Jobs of some 125 or more train porters on the St. Louis-San Francisco Railroad were saved last week when the U.S. Supreme Court voted, 6-3, that the courts have power to protect colored railroad workers from job discrimination.

The decision, rendered in a case in which the railroad company had entered into a discriminatory agreement with an all-white union, was in answer to a class suit brought by Simon L. Howard Sr., a porter for nearly 40 years, on behalf of himself and others.

The action was part of a continuous fight being waged by the Association of Colored Railway Trainmen and Locomotive Firemen and the International Association of Colored Employees, which began back in 1939.

Ultimate effect of the decision, rendered by Justice Hugo Black with Justices Felix Frankfurter, William O. Douglas, Robert H. Jackson, Harold D. Burton and Tom C. Clark agreeing, is that it will be a decisive weapon for the use of colored workers against discriminatory practices by lily-white rail unions.

Three Dissent

Dissenting were Chief Justice Fred M. Vinson, Stanley F. Reed and Sherman Minton, Justice Minton delivered the dissenting opinion.

Howard orginally brought suit to prevent the Frisco and the Brotherhood of Railroad Trainmen from abolishing the "train porter" jobs and from hiring white brakemen to replace them under an agreement of March 7, 1946, between the Frisco and the BRT.

Colored employees of the Frisco called "train porters" actually performed all the duties of white "brakemen." The BRT, bargaining representative of "brakemen," had for years reportedly used its influence to eliminate colored trainmen and get their jobs for white men who, unlike colored "train porters," were or could be members of the BRT.

Forced Workers Out

The BRT finally forced the Frisco to agree to discharge the colored "train porters" and fill their jobs with white men who, under the agreement, would do less work but get more pay.

Howard and other "train porters" were personally notified to turn in their switch keys, lanterns, markers and other brakemen's equipment and notices of job vacancies were posted to be bid in by white brakemen only.

The District Court enjoined the Frisco from abolishing the position of "train porter" under the notices given on the ground that these notices were insufficient to meet the requirements of the Railway Labor Act.

Penalized For Color Alone

The majority opinion pointed out that the "train porters" are threatened with loss of their jobs because they are not white and for no other reason. The jobs they did hold under its old name would be abolished by the agreement; their color alone would disqualify them for the old job under its new name."

The Supreme Court decision affirms that of the U.S. Circuit Court of Appeals at St. Louis and represents an extension of the doctrine laid down in the case of Bester Williams, a fireman on the Louisville and Nashville Railroad, and Tom Tunstall, Norfolk-Southern Railway fireman.

In these latter cases the Supreme Court ruled that the collective bargaining representative under the Railway Labor Act must represent all members of the craft or class without discrimination and cannot use its statutory position to make unlawful discriminations within the craft.

'Unlawful Use Of Power'

In the Howard case, it extended that doctrine by holding that: "The Federal act prohibits bargaining agents it authorizes from using their position and power to destroy colored workers' jobs in order to bestow them on white workers. And courts can protect those threatened by such an unlawful use of power granted by a Federal act."

The fight for protection of colored railroad workers, by the use of legal action, began in 1939 when the two associations commissioned the late Charles H. Houston and Joseph C. Waddy to prosecute suits against the unions and railroad companies for discrimination against colored workers.

The first case filed, jointly sponsored by the two organizations, was known as Ed Teague against the Gulf, Mobile and Ohio Railroad. This case was lost in the U.S. Circuit Court of Appeals.

Steele, Tunstall Cases

In 1941, the Steele and Tunstall cases were brought, the Steele case being filed in the State courts of Alabama and the Tunstall case, in the U.S. District Court in Virginia. The Steele case was sponsored by the Association of Railway Employees and the Tunstall case by the Association of Colored Railway Trainmen.

After these cases were won, the International filed seven suits against Southeastern railroads and the Brotherhood of Locomotive Firemen and Enginemen. These cases were all settled within the last few months by injunctions against the brotherhood and the railroads.

These orders restrained them from enforcing any agreement limiting the number of colored firemen to a certain percentage of the total and prohibiting them from barring colored firemen from jobs as helpers on Diesel engines.

Also among the cases sponsored by the associations was that of James Tillman, a train porter on the Frisco, which resulted in the breaking of an agreement, made in 1928 by the BRT and the Frisco, which provided that no colored person would be hired in train, engine and yard service.

Daytona's Auditorium Doors Open

JACKSONVILLE, Fla. — (Special)—Through a Federal Court ruling here last Thursday, Daytona Beach's Municipal Auditorium has been opened to Negroes.

U. S. District Judge Bryan Simpson ruled that Negroes must be permitted to attend public performances.

Judge Simpson announced his decision in a motion granting Negroes admission to the Peabody Auditorium after studying the case for several months. He delayed terms of the final judgment until a conference with attorneys set for 10 A. M., June 24.

* * *

IN AN opinion filed Thursday, Judge Simpson held Negroes did not enjoy "equality in fact" in the auditorium's operation.

The auditorium, located on the peninsula side of the Halifax River in an all-white section, was built at a cost of $808,182.28 out of funds from a municipal bond issue. It is operated by the Peabody Auditorium advisory board, which was named co-defendant in the action.

$72,734.55 in public funds was used by the City of Daytona Beach for a smaller and less luxurious building called the "Negro Recreational Center," located on Cypress Street on the mainland side of the river. An advisory board, composed of Negroes, operates the center which is used as a gymnasium for basketball and an auditorium seating 1,400 persons.

The Peabody Auditorium, with a seating capacity of 2,560, is used for auditorium purposes only, the court opinion stated. Daytona Beach's population of 30,000 is approximately three-fourths white.

* * *

JUDGE SIMPSON said that Negroes had asked for a declaratory judgment and permanent injunction to compel the City of Daytona Beach to admit them to performances in the auditorium, whenever the general public is admitted.

The defendants, he said, insisted that the Negro Recreational Center was a "substantially equal" facility.

"But does this meet and answer the real question?" Judge Simpson asked. "Do Negro and white citizens enjoy equality in fact as to the . . . enjoyment of these publicly owned facilities?

"Under existing conditions, if one of these Negro plaintiffs wants to see or hear Nelson Eddy or Lauritz Melchoir sing, or the U. S. Marine Band play, or the Virginia Barter Theatre Players perform, they must go to another state of which they are citizens—that city, of which they are also citizens—sponsors public performances by these and similar artists. From these performances they are excluded solely by reason of their color.

"Their personal and individual right as citizens (regardless of color) is to attend such performances so long as seats are available, the required admission is paid and they conduct themselves properly and lawfully as individuals.

"My understanding does not admit of any other application to the case before me of the cite precedents, which must be regarded and followed as the law of the land."

* * *

HANDLING THE case since its inception, filing in the Circuit Court and later taking the case to the U. S. Federal District Court here before Judge Simpson was Horace E. Hill, Daytona Beach attorney. He entered the case when the Negro citizenry of Daytona Beach and Florida were denied admission to the Peabody Auditorium.

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"Neither a state government nor the Federal Government may do so, but I know of no applicable federal law which says that private parties may not.

That is the whole problem underlying the proposed federal Fair Employment Practices Code."

He said the Supreme Court "by sheer power" can lay down a code of fair employment practices. "But sheer power is not a substitute for legality. I do not have to agree with the discrimination here indulged in to question the legality of today's (June 9) decision."

He concluded that the dispute was a matter to be resolved by the National Mediation Board, not the courts.

The suit was brought at the instances of the Association of Colored Railway Trainmen and Locomotive Firemen of which S. N. Clark, of Roanoke, Va., a brakeman for the Norfolk and Western Railway is president. Attorneys for Howard were Joseph C. Waddy of Washington, D. C. and Victor Packman and Henry D. Espy of St. Louis. On the brief for Howard also was William C. Gardner of Washington

Supreme Court Foreshadows Ruling on Segregated Schools

WASHINGTON, June 9—(AP)—The Supreme Court wound up its current term today by foreshadowing a potentially historic decision on segregation of white and Negro children in public schools.

Governor James F. Byrnes, of South Carolina, has said if his State should lose the right to segregate children, South Carolina will abandon its public school system.

Georgia, Virginia and Alabama have taken steps that could lead to dropping public schools in favor of private schools if segregation is outlawed.

The Supreme Court said today it will hear, after it meets again next October 6, arguments on two appeals by Negro parents who say their children are stigmatized as inferior by having to attend all-Negro schools. The cases originated in Topeka, Kans., and Clarendon County, S. C.

In both places the appeal is against segregation pure and simple, not over facilities offered in the segregated schools. Thus, the Supreme Court's ruling could affect public school segregation wherever practiced.

In other actions of its final opinion day before recess, the high court:

(1) Said the Railway Labor Act bars unions from taking jobs from Negro workers to give them to white workers. The Federal courts must issue injunctions, the 6-3 Supreme Court ruling said "to protect those threatened with such an unlawful use of power" by a union.

The case arose from provisions of an agreement between the Brotherhood of Railroad Trainmen and the St. Louis-San Francisco Railway. The court found that the contract threatened Negro train porters "with loss of their jobs because they are not white and for no other reasons."

Justice Black delivered the majority opinion. Justice Minton filed a dissent concurred in Chief Justice Vinson and Justice Reed.

(2) Held valid an Oregon law requiring that a criminal claiming insanity must prove beyond a reasonable doubt that he is insane. The 7-2 decision upheld the death sentence of Morris Leland for a sex killing near Portland, Oreg., in 1949, when Leland was 22. Justice Clark read the majority opinion. Justice Frankfurter read a sharply worded dissent, in which Black joined, calling the Oregon law a "legal oddity" because it requires the accused, and not the government, to carry the burden of proof.

(3) Ordered dismissed a case in which three big unions questioned validity of the government's 1950 seizure of the railroads to avert a strike. The case was dismissed as moot—no longer live—since the labor dispute that brought about seizure has been settled and the railroads returned to private ownership. But dismissal of the case by the high court meant rejection of the union's contention that the seizure may not have been legal. The government seized the railroads under a special emergency law.

(4) Deferred action, at least until Fall, on a Justice Department request that the high court settle the question of who owns some $69,000,000 worth of stock of the American President Lines, Inc. The government claims the stock was forfeited to it when the firm got a government loan. The loan has been repaid, and the borrowers demand possession of the controlling stock, held by the government. A contempt of court action against Secretary of Commerce Sawyer is involved.

The school segregation case came to the Supreme Court from two special Federal courts. They upheld segregation in Topeka and in Clarendon County, S. C.

The special courts cited an earlier Supreme Court decision that segregation is permissible if equal facilities are provided for both races. The Supreme Court has also ruled that the States, in regulating their public schools, have discretion to segregate.

The special court that ruled on segregation in Topeka decided facilities were substantially equal for both whites and blacks. Segregation continues in Topeka through the sixth grade, after which the two races mingle at school.

In Clarendon County, the special court ruled that school authorities were doing all "humanly possible" to equalize school conditions.

Negro parents, appealing against the special court findings, said segregation is a "stigmatizing badge of inferiority" that violates the constitutional promise of equal protection under the law.

The court today called for reargument next October on the appeals of four North Carolina Negroes under death sentences.

The central issue involved in the three separate cases is whether the doomed men should be granted habeas corpus hearings in lower Federal courts. Reargument in each case was set for October 13, the second Monday of the new term.

The Negroes involved are: Bennie Daniels and Lloyd Ray Daniels, convicted in Pitt County, N. C., in the 1949 killing of Wil-

of beating and raping a middle-aged white woman. On the third its new term any action on the complaint of a Baptist minister contended that the government denied him a jury venire was that Vance County, on a radio station license because of attorneys. his religious speeches and writings. The court will act on the criminatorily ex- complaint in its new term beginning October 6.

grand or trial

led their cases.

liam Benjamin O'Neal, a white taxi driver.

Clyde Brown, convicted of the an July 18, 1947. On the trial, a special jury

rape of a white student in Winston-Salem on June 16, 1950. The obtained from Vance

girl was badly beaten with a rifle. request of defense at

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Raleigh Speller, convicted in cluded from the gra

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Reverses Conviction Of Texas Exhibitor

South's Censorship Policies Jolted By Decision Based On Case Of Film "The Miracle"; Texas City's Banning of "Pinky" Declared Invalid

By Louis Lautier

WASHINGTON, D. C. — (NNPA) — The banning of motion pictures in southern states through censorship because of their interracial themes was outlawed last Monday when the United State Supreme Court reversed the conviction of a Texas exhibitor for the showing of "Pinky."

The court acted in the case of W. L. Gelling, the manager of the Paramount Theater in Marshall, Tex., who appealed from the judgment of the Court of Criminal Appeals of Texas affirming his conviction and sentence by lower courts.

Reversal of his conviction was based on the high court's decision in the case of "The Miracle," in which the court held unconstitutional a New York statute permitting the banning of motion picture films on the grounds that they were "sacrilegious."

MOTION PICTURE producers, distributors and exhibitors have several times previously sought unsuccessfully to get the Supreme Court to pass on similar issues arising out of the banning of interracial films, particularly by Memphis and Atlanta boards of censors.

By its action last Monday the court held invalid an ordinance of the City of Marshall, Tex., requiring the submission of a board of censors on demand of any motion picture exhibited within that city and prohibiting the exhibition of a picture disapproved by the board as "of an immoral character or of such character as to be prejudicial to the best interests of the people of said city, if publicly shown." Violation of the ordinance was deemed a misdemeanor, punishable by a fine of $200.

Gelling booked "Pinky," a Twentieth Century-Fox production, for a three-day run, Feb. 12, 13 and 14, 1950.

The Marshall City Commission on Feb. 9, 1950, "reactivated" the board of censors established in 1921, designating five new members, and the board demanded a submission of the picture for approval.

THE BOARD on Feb. 11, 1950, disapproved the showing of "Pinky," stating in writing its "unanimous opinion that the said film is prejudicial to the best interests of the citizens of the City of Marshall." The picture nevertheless was shown on the dates for which it was booked without untoward incident.

A complaint filed in the corporation court Feb.. 15, 1950, charged Gelling with the misdemeanor of showing the picture in violation of the ordinance. Gelling was arrested and released on bail. After trial without a jury, he was convicted and fined $100.

Gelling appealed to the Harrison County Court, where the case was tried anew before a judge and jury. He was again convicted and fined $200. The Texas Court of Criminal Appeals sustained his conviction and sentence.

JUSTICE FELIX Frankfurter concurred in the judgment reversing the Texas courts on the grounds that the Marshall ordinance "offends the Due Process Clause of the Fourteenth Amendment on the score of indefiniteness." He referred to his separate concurring opinion in the case of "The Miracle," where he found that the term "sacrilegious" was so vague as to violate that clause.

"Pinky" was produced by Karryl F. Zanuck, directed by Elia Kazan, and featured Jeanne Crain, Ethel Barrymore and Ethel Waters. It was based on a noval, "Quality," by Cid Ricketts Sumner.

In the case of "The Miracle" the court ruled that motion pictures are included within the free speech and free press guaranty of the First and Fourteenth Amendments.

ON FEB. 16, 1951, the New York State Board of Regents, after viewing "The Miracle," determined that it was "sacrilegious" and ordered the Commissioner of Education to rescind the license authorizing its exhibition with English subtitles as one part of a trilogy called "Ways of Love."

"The Miracle" was produced in Italy by Roberto Rosselini. The story of "The Miracle," as summarized in an opinion by Justice Frankfurter concurring in the judgment of the court reversing the New York Court of Appeals, which upheld the banning of the film, is:

"A poor, simple-minded girl is tending a herd of goats on a mountainside one day when a bearded stranger passes. Suddenly it strikes her fancy that he is St. Joseph, her favorite saint, and that he has come to take her to heaven, where she will be happy and free.

"WHILE SHE PLEADS with him to transport her, the stranger plies the girl with wine, and when she is in a state of tumult, he apparently ravishes her. This incident in the story is only briefly and discreetly implied.)

"The girl awakens later, finds the stranger gone, and climbs down the mountain not knowing whether he was real or a dream. She meets an old priest who tells her that it is quite possible that she did see a saint, but a younger priest scoffs at the notion. 'Materialist!' the old priest says.

"Then, one day, while tending the village youngsters as their mothers work at the vines, the girl faints and the women discover that she is going to have a child. Frightened and bewildered she suddenly murmurs, 'It is the grace of God!' and she runs to the church in great excitement, looks for the statute of St. Joseph, and then prostrates herself on the floor.

Rosselini cabled His Eminence, Francis Cardinal Spellman protesting against boycott of "The Miracle":

"In 'The Miracle' men are still without pity because they still have not come back to God, but God is already in the faith, however confused, of that poor persecuted woman; and since God is wherever a human being suffers and is misunderstood, 'The Miracle' occurs when at the birth of the child the poor, demented woman regains sanity in her eternal love."

Supreme Court Voids Town's 'Pinky' Ban

By the Associated Press

The Supreme Court yesterday struck down a movie censor ordinance by which the city of Marshall, Tex., disapproved the showing of the film, "Pinky."

The High Court, in a unanimous order, cited its decision of a week ago in which it held that New York State film censors had illegally barred showing of the Italian-made movie, "The Miracle," on the ground that it was sacreligious.

Yestreday's order gave no explanation on the part of the Court, other than the citation of the New York decision.

Frankfurter's Position

However, Justice Frankfurter noted that he felt the Marshall city ordinance offends the Constitution's due process of law clause because of indefiniteness.

"Pinky" starred Jeanne Crain and Ethel Waters and drew objections in Texas and other parts of the South because it (1) depicts a white man retaining his love for a woman after learning she is a Negro; (2) depicts a white man kissing and embracing a Negro woman; and (3) includes a scene in which two white ruffians assault "Pinky" after she has told them she is colored.

Yesterday's ruling adds another page to the Court's interpretation of how far movie censors may go.

In last week's decision the tribunal said films are entitled to the constitutional rights of free speech and free press, but it declined to strike down all movie censorship.

Franfurter's comment on yesterday's action noted that the Marshall ordinance authorized the city board of censors to rule against a showing when the board feels the film is "of such character as to be prejudicial to the best interests of the people of the city."

It was this regulation which Frankfurter said could not stand because of indefiniteness.

Treason Conviction Upheld

In another decision, the Court yesterday upheld the treason conviction of Tomoya Kawakita, accused of brutal and inhuman treatment of American prisoners of war while he served as an interpreter at Japan's infamous Camp Oeyama.

Kawakita, born in California of Japanese parents, is under sentence to die in San Quentin Prison's gas chamber.

Justice Douglas delivered the 4-3 decision.

Chief Justice Vinson wrote a dissenting opinion in which Justices Black and Burton joined. Justices Frankfurter and Clark disqualified themselves in the case.

Kakakita went to Japan with his father in 1939 and remained there throughout the war. He returned to the United States in 1946. One month later he was spotted by a former GI in a Los Angeles department store. FBI agents trailed him and arrested him at his Los Angeles home.

More than 30 former servicemen testified against him at his trial in United States District Court in Los Angeles.

RR Firemen Are Awarded $15,000

WASHINGTON—A "victory fund" of $15,000 was divided among the Negro locomotive firemen who successfully waged an eleven-year-fight against job bias as members of the Provisional Committee for the Organization of Colored Locomotive Firemen, during the committee's annual meeting here last week.

The money constituted damages paid by the white Brotherhood of Locomotive Enginemen and Firemen under terms of an agreement made recently when the white union capitulated through its president, D. B. Robertson, to the committee through its chairman, A. Philip Randolph.

UNDER TERMS of the agreement the white union also paid $15,000 for fees of the lawyers who were retained by the Provisional Committee to press its legal suit against the Southeastern Carriers agreement which excluded Negroes from employment on the Southern railroads.

The Provisional Committee's case was won in the United States Supreme Court and upheld by Federal District Judge Alexander Holtzoff on Jan. 7.

The white union's capitulation, which now makes it possible for Negro locomotive firemen to enjoy seniority rights without discrimination, and the awarding of the damages was announced at a Friday press conference at which Mr. Randolph hailed the U. S. Supreme Court "victory" and mapped plans for getting Negroes hired on the railroads.

* * *

"WE CONSIDER this victory in the courts giving security to the jobs of colored locomotive firemen one of the major steps of industrial progress for Negro workers in the United States.

However, the Provisional Committee does not think that this victory is the end of the fight because we must proceed now to the task of securing employment of colored men as locomotive firemen," Mr. Randolph said.

He emphasized that getting more Negroes hired by the Southern railroads will not be easy because only two Negro locomotive firemen have been hired by these railroads since 1925.

* * *

THE BROTHERHOOD of Sleeping Car Porters' president said the Provisional Committee intends to set up an educational center to train colored firemen, and intends to "draw up a broad program utilizing public forces" to get Negroes hired as locomotive firemen.

Unless Negroes are hired as locomotive firemen, explained Mr. Randolph, despite the victory for job security, it will only be a matter of time when no Negro firemen will be in an engine cab, since the present practice is not to employ Negroes to take the place when a Negro firemen is retired, fired or dies.

During the conference, M. P. Webster gave an address on the role of the President's Committee on Fair Employment Practice in the struggle of the Negro railroad firemen for job security. Joseph L. Rauch Jr., attorney for the Provisional Committee, gave a report on the court battles. Ashley L. Totten, secretary-treasurer, gave a comprehensive financial report, and B. F. McLaurin, field organizer, reported on organization, grievances and claims.

Urgency of Progress Is Now All-Important

High Court School Rulings in Vital New Stage

By BENJAMIN E. MAYS

THE UNITED STATES Supreme Court has agreed to review the Clarendon County, South Carolina, case and the one in Kansas after it reconvenes on Oct. 6. Both cases are asking relief from segregation. Both cases are asking the United States Supreme Court to declare segregation unconstitutional.

The argument against segregation contends that it creates in the Negro child an inferiority complex from which he seldom ever recovers. Even if the facilities are equal, salaries are equal, and the teachers are equally well trained, if the Negro child is forced to attend an all-Negro school, it injures the Negro child both mentally and spiritually.

I think it is safe to say that all right thinking, upstanding Negroes are in opposition to legalized segregation. But there are those who honestly feel that the suits should not be launched at the grade school level at this time. There are others who argue that since segregation is unconstitutional and undemocratic, it doesn't matter where the attack is made.

There are possibly three or four things open to the United States Supreme Court. It can find some way of saying that Negro and white schools in Clarendon County are equal and there is no violation of the Constitution. If it says that, it will confirm the fallacious doctrine "separate but equal," and in a way will repudiate what the Supreme Court has done in both the Texas and Oklahoma cases.

In both of these cases intangibles were taken into consideration which came near saying that equality in separation is not possible. In the second place the Supreme Court may find a way of ruling on the case in such a manner as not to declare itself on the constitutionality of segregation per se. The Supreme Court judges are experts in finding loop holes to avoid doing what they do not want to do.

Confining themselves to the case at point, they may do that. The third course open is to declare all legalized legislative segregation unconstitutional, especially where public money is involved and where there are interstate connections. The Court might conceivably do a fourth thing: declare all segregation by law unconstitutional whether decreed by Federal, state or local government.

In the latter case it would leave no autonomy to the states and none to city governments on the point of segregation. There could be no legislation at all where one group would be segregated. No kind of segregation could be sustained by law.

The greatest tragedy of all would prevail if the Supreme Court should rule in such a way as to place its stamp of approval upon segregation. If it should rule that segregation is not necessarily discriminatory, it would be a terrible thing. It would saddle segregation upon us for possibly another fifty years.

Segregation is now on its way out under the impact of decisions already handed down by the Supreme Court. It is my hope that the Court will do nothing to give support or prop to an institution that has already lived too long.

I shall be uneasy until the ruling is made. It is seldom that a Supreme Court will rule ahead of the point where it thinks the people are. I hope the judges will not forget the bad impression a decision confirming segregation would make on the peoples of the earth, especially the peoples of Africa and Asia.

Communists everywhere would love a decision upholding segregation. They would make great use of it. And yet the nine judges are human. The Federal Government has great respect for Southern opinion. After all, the Constitution means what the majority of nine judges say it means.

If segregation per se is not declared unconstitutional, it will be better for the judges to hedge, hold what we have gained, and do nothing to confirm this evil. In every decision the Supreme Court makes it should further the cause of democracy.

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Is Racial Segregation Constitutional?

5 School Cases Raise This Major Issue

Supreme Court's Ruling In Similar Cases Has Held That States Must Offer Equal Facilities

By LOUIS LAUTIER

For the NNPA News Service

WASHINGTON

The question of whether racial segregation is of itself unconstitutional is squarely joined in the five cases before the Supreme Court involving segregation in grade and elementary schools in Kansas, South Carolina, Virginia, the District of Columbia and Delaware.

On the one hand is a uniform line of decisions beginning with the Gaines and Sipuel cases, in which the Supreme Court held that the State must provide colored students with educational opportunities equal to those afforded white students, and do it at the same time that it offers such opportunities to white students.

In the McLaurin and Sweatt cases the court extended these rulings. It held that the University of Oklahoma, having admitted G. W. McLaurin to its Graduate School, could treat him no differently than it treated other students. In other words, the university could not segregate him from white students in the classroom, library, cafeteria and other facilities.

Cites Texas Case

The State of Texas established a separate law school to give Heman Marion Sweatt a legal education, but the court in that case held that there were certain factors incapable of measurement which made it impossible for Sweatt to obtain in a jim crow law school a legal education equal to that afforded white students in the University of Texas Law School.

On the other hand, South Carolina, Virginia and Delaware are relying heavily upon two old Supreme Court decisions, which they contend established the "separate but equal" doctrine as law in the field of education. These two cases are Plessy vs. Ferguson, decided May 18, 1896, and Gong Lum vs. Rice, decided Nov. 21, 1927.

But these two cases may be distinguished from the South Carolina, Virginia and Delaware school segregation cases. In the latter cases, the grievances arose out of urged that state-imposed racial segregation violates the 14th Amendment.

Daughter Segregated

In the Plessy and Gong Lum cases, the grievances arose out of Plessy and Martha Lum, daughter of Gong Lum, being classified in the segregated group.

The Plessy case involved the validity of a Louisiana law requiring all railroad companies carrying passengers in that state to have separate but equal accommodations for white and colored passengers. Plessy was charged with violating the law because he insisted upon going into the white coach.

Plessy claimed that he was seven-eighths white and one-eighth African, that the mixture of African blood was not discernible, and that he was entitled to every right, privilege and immunity secured to white citizens of the United States.

Court Upheld State

The court held that the Louisiana law, as applied to intrastate travel, did not abridge Plessy's privileges or immunities, deprive him of his property without due process of law, nor deny him the equal protection of the laws.

Gong Lum wanted his daughter, Martha, to attend a white school in Mississippi. At the opening of school, she appeared as a pupil. At noon, the superintendent notified her that she would not be allowed to return to the school because she was a Chinese and not a Caucasian.

Her father filed a petition for a writ of mandamus. He alleged that there was no school for Chinese children in Bolivar County, Miss.; that he was a taxpayer and that Martha was entitled to attend the Rosedale Consolidated High School; that she was not a member of the colored race, nor was she of mixed blood, but that she was pure Chinese.

Only Two Groups

The Mississippi Suprene Court held that the Mississippi Constitution divided educable children into two groups—white, on the one hand, and the brown, yellow and black, on the other, and that Martha Lum could not insist upon being classified with the whites under this constitutional provision.

The U.S. Supreme Court ruled that the decision was within the discretion of Mississippi in regulating its public schools and it did not conflict with the 14th Amendment.

In the Sweatt case, the Supreme Court disagreed with the State of Texas that the "separate but equal" doctrine of the Plessy case required it to uphold the decision of Texas courts that the jim crow school offered Sweatt "privileges, advantages, and opportunities for th study of law substantially equivalent to those offered by the State to white students at the University of Texas."

Nor did it agree with former Solicitor General Philip B. Perlman and attorneys for the NAACP that the Plessy case "should be reexamined in the light of contemporary knowledge respecting the purpose of the 14th Amendment and the effects of racial segregation. But it did hold that the equal protection clause of the 14th Amendment required that Sweatt be admitted to the University of Texas Law School.

How the court will decide the Kansas, South Carolina, Virginia, District of Columbia and Delaware cases only the Lord knows.

Ruling on School Segregation

Extent of Supreme Court Holding on Issue's Constitutionality Reviewed

TO THE EDITOR OF THE NEW YORK TIMES:

Most cases reaching the Supreme Court, and particularly those involving constitutional questions, contain difficult and complex issues of law and policy. At least this is true of the public school racial segregation cases which were just argued before the court.

In his column of Dec. 11 Mr. Krock led his readers to believe that racial segregation in public schools has long been held to be constitutional by the Supreme Court. He cites certain cases decided by the Supreme Court as supporting the proposition of the constitutionality of segregation in public schools and concludes:

"These are some of the decisions the court must repudiate if it is now to declare public school segregation unconstitutional."

The fact of the matter is that the Supreme Court has never expressly "held" that state-enforced racial segregation in education is constitutional. I am here using the term "held" not to quibble with Mr. Krock, but to underline the important differences between what is technically a "holding" in a case and what is dictum.

Weight of Precedent

Where the court authoritatively decides a case involving a stated factual situation every factor necessary to the decision is part of the "holding" and forms part of the precedent. Whereas all surplusage, asides, observations not necessary to the decision constitute dicta. Precedent has great weight in determining the result of future cases involving similar factual situations raising the same legal issues.

The court is, in a manner of speaking, "bound" by its precedents. On the other hand, the dictum of prior cases has only such weight as the circumstances of the case, the soundness of the reasoning and the applicability to the circumstances of the present case warrant.

Mr. Krock cites Cumming v. County Board of Education 175 U. S. 528 (1899) as sustaining the constitutionality of school segregation. In this case Negro taxpayers sought to restrain school authorities from using public funds for the establishment of white high schools while none existed for Negro children. The question before the court was the validity of the spending power of the school authorities under these circumstances and not the validity of racial segregation. At page 543 of the opinion the court specifically pointed out that:

"It was said at the argument that the vice in the common school system of Georgia was the requirement that the white and colored children of the state be educated in separated schools. But we need not consider that question in this case."

Another case cited by Mr. Krock is Berea College v. Kentucky 211 U. S. 45 (1908). This case involved the question of whether a private school is deprived of property without due process of law by a state statute prohibiting the mixing of colored and white students. It is clear that whatever the "property" rights effected a statute of this sort, the Negro students' interest in equal protection is certainly much different. To put it more precisely, this case might be authority for the proposition that a college is not deprived of property without due process of law if it is limited to a segregated school body, but it is not authority for the proposition that a Negro student is not deprived of the equal protection of the laws when the state passes a racial segregation statute.

Implication and Authority

There are other cases where the court has implied by dicta that racial segregation in education is permissible under the Constitution. But these cases, to repeat, are not "authority" for the proposition. The belief that the Supreme Court has never authoritatively passed upon the question of the constitutional validity of racial segregation in public education has been asserted by many respectable lawyers, including the deans of both the Harvard and Yale Law Schools.

While it is true that the practice of racial segregation in public education has a long, and discreditable, history, this is not due to the fact that the Supreme Court has upheld its constitutionality. On the contrary, perhaps it is because the Supreme Court has been astute to avoid passing upon this grave question that segregation in schools has gained whatever respectability time has given to it.

To conclude, if the Supreme Court now decides that segregation deprives Negro children of the equal educational opportunities required by the Fourteenth Amendment, this decision would not be contra to any prior holdings of the court, and, in fact, would be consistent with the rationale of the Sweatt and McLaurin opinions.

FRED FAGELSON.

Cambridge, Mass., Dec. 12, 1952.

Supreme Court Hears Arguments On Legality of Segregated Schools

Virginia Case Is One of Five

WASHINGTON, Dec. 9 (AP)—The Supreme Court heard clashing arguments today on a major issue: Is it legal to have separate schools for Negroes and white persons?

Negro lawyers pleaded with the tribunal to strike down such segregation as unconstitutional. Opposing attorneys contended that separation of the races is legal so long as educational opportunities are equal.

The Supreme Court, in effect, was being urged to meet the issue head-on; to uphold or throw out a doctrine it laid down in a decision in 1896. It held then that separate facilities for the races are constitutional if they are equal.

Challenges States' Authority

Teeing off on arguments that will run on for three days, Robert Carter, of New York, a Negro attorney, contended that "no State has any authority" to divide its citizens by race.

Regardless of whether Negro schools are just as good as white, he said, the very fact of segregation deprives Negroes of equal opportunities for education and development. That, he said, violates the Fourteenth Amendment to the Constitution and its guarantee of equality of treatment for all people.

Thurgood Marshall, another New York attorney, picked up the same thread of reasoning a bit later.

But Paul E. Wilson, assistant attorney-general of Kansas, and Justice Frankfurter, from the bench, pointed out there is a long history of court decisions and legislative action built on the doctrine that separate facilities for the races are constitutional if they are equal.

Point of Agreement

In Kansas, Wilson said, the schools are equal, in buildings, teachers and courses. With that, Carter agreed. But he declared:

"Here we abandon any claim of constitutional inequality that comes from anything but segregation itself. We say that on the basis of separation, Negroes do not have equal protection before the law and equality of opportunity."

Lumped together before the court were five cases, from Kansas, South Carolina, Virginia, Delaware and the District of Columbia—all challenging separate public schools for white and Negro children as unlawful under the Constitution.

Arguments were completed today in the Kansas case, with Carter and Wilson the opposing lawyers. A start was made on the South Carolina case, with Marshall and John W. Davis, of New York—the Democratic presidential nominee in 1924—as the rival attorneys.

The Supreme Court won't get around to a decision in the cases until some time next year. When it does, the ruling will touch 13 other States which have complete or partial segregation in their schools.

—AP Wirephoto

VIRGINIANS AT SEGREGATION HEARING—Three Virginia school officials talking outside Supreme Court room in Washington yesterday between sessions of a hearing of cases involving segregation in public schools. Left to right: Maurice R. Large, of Farmville, chairman of Prince Edward County School Board; Dowell J. Howard, of Richmond, State Superintendent of Public Instruction, and T. J. McIlwaine, of Farmville, Prince Edward schools superintendent. They are defendants in one of the cases.

For the South with its traditions of racial segregation, the decision may rank as one of the most important handed down in years.

The Kansas case centers on segregation in the Topeka school system. Negro parents and children appealed to the Supreme Court to reverse a ruling by a special three-judge United States District Court upholding a State law that permits cities of more than 15,000 to set up separate elementary schools for Negro and white pupils.

The South Carolina case is somewhat different: another special three-judge Federal court, in Charleston, had held that segregation was permissible in public schools if equal facilities were provided.

It directed school authorities to provide equal facilities and report back what they were doing about them. Negro parents of Clarendon County appealed this ruling to the Supreme Court, which sent it back last January with instructions to the special court to study the reports on any progress made toward equalizing school.

In a new ruling last March, the special court said school officials were complying with the decree to equalize facilities and reaffirmed its earlier position that segregation in public schools is constitutional. This latest ruling now is before the Supreme Court on appeal.

"Detrimental Effect"

The Topeka special court found there was no substantial difference in Negro and white school facilities, qualifications of teachers, and quality of instruction. But it said, too, that "segregation of white and colored children in public schools has a detrimental effect upon the colored children," with a tendency to retard education and mental development and deprive them of "some of the benefits they would receive in a racially integrated school system."

Carter contended the Kansas law permitting segregation on a partial basis is "fatally defective and should be struck down."

"Where there is segregation," he said, "it is impossible for Negro students to obtain equal educational opportunities." He said the Kansas law, by its very wording, admits that segregation constitutes discrimination.

Davis told the court the South Carolina Constitution, and State laws implementing it, "do not offend the Fourteenth Amendment."

Davis, Democratic presidential nominee in 1924, said that if the Supreme Court struck down segregation in South Carolina he did not see how a State would be able in the future to segregate pupils on any basis, including sex, age and mental capacity.

He also said that under Governor James F. Byrnes there has been a surge of educational reform and improvement in South Carolina, financed by a $75,000,000 fund supported by a 3 per cent sales tax.

Davis spoke for about 15 minutes before the court adjourned for the day. He will resume his argument tomorrow.

—AP Wirephoto

LEADERS IN SEGREGATION TEST—Opposing counsel in the battle against segregation in the public schools, now being waged in the United States Supreme Court, converse before yesterday's hearing in Washington. They are John W. Davis (left), onetime candidate for the presidency, representing the State of South Carolina, and Thurgood Marshall, attorney representing groups seeking to outlaw segregation.

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Supreme Court Airs Segregation

WASHINGTON, Dec. 9 (UP).—A Negro attorney said today that race segregation in schools hung a "badge of slavery" on Negro students but John W. Davis, noted constitutional lawyer, replied that the practice did not violate Negro rights.

Their arguments climaxed the first day's debate before the Supreme Court on one of the most explosive issues in American life—the constitutionality of the long-standing doctrine of "separate but equal" educational facilities for Negroes and whites.

MENTAL 'ROADBLOCKS'

Thurgood Marshall, prominent Negro attorney, argued that segregation put "roadblocks" in the minds of Negro children that damaged their chances for an education.

"The badge of slavery is perpetuated by the State segregation statutes," he said.

Davis, Democratic Presidential candidate in 1924, replied that if a State could not classify pupils on the basis of race, it could not classify them on the basis of age, sex, or mental capacity either.

The two attorneys debated a segregation case that reached the Supreme Court from Charleston, S. C. It was the second such case to be argued today of the five pending before the court.

KANSAS LAW ATTACKED

Earlier, Robert L. Carter, Negro attorney from New York, declared a Kansas school segregation law stamped Negro students as "an inferior caste." But the State's Assistant Attorney General, Paul A. Wilson, said Kansas gave all students "equal" education.

Each case raises the same basic question: Does segregation in schools violate the Constitution?

Marshall said segregation in schools must be declared unconstitutional because it denied to Negroes "the equal protection of the laws." But the two attorneys defending the State laws said the question should be settled on a basis of whether Negroes received "equal" education.

PRAISES BYRNES ACTION

The 79-year-old Davis said South Carolina raised a $75,000,000 bond issue to improve Negro schools.

"Under the leadership of the present Governor (James F. Byrnes), there has been a surge for educational reform and improvement (in South Carolina) that I suspect has not been equaled by any other State," Davis said.

Davis asserted South Carolina had done everything it could to put Negro education on a par with that offered white students.

He added crisply that the evidence offered on the effects of segregation on Negro children was "of slight weight and in conflict with the opinion of other and better informed persons."

DISPUTES CLASSIFICATION

Marshall countered Davis' argument that the State should have a right to classify its children by saying there was no recognizable difference on a racial basis of a child's educational "class."

"Given a similar learning situation," Marshall said, "a Negro and a white child will tend to do about the same thing."

Justice Felix Frankfurter then asked Marshall this question:

"Can you escape facing the sociological facts?"

Marshall replied that the State of South Carolina offered no testimony, sociological or otherwise, to show need for segregation.

SEES EQUALITY DENIED

Carter made the opening argument at today's hearing. He said segregation in itself denied "equal educational opportunities" and asked the court to nullify the Kansas segregation law. In Kansas segregation is permitted in cities of more than 15,000 persons.

Hours before the attorneys started their arguments every seat in the marble-columned chamber was filled. Several hundred waited outside.

The Supreme Court's decision, which will not come for several weeks, could have far-reaching effects. South Carolina last month voted to repeal a provision of the State constitution requiring free public schools in case the high court outlawed segregation.

'AN INFERIOR CASTE'

Carter argued in a low, clear voice that segregation put Negro children in "an inferior caste, lowers their level of aspiration and instills feelings of inferiority."

"We abandon any claim of constitutional inequality — except segregation itself," he said.

Wilson countered that the c tutionality of the Kansas la been upheld by the State's court. He predicted the S Court would reach this san clusion.

Carter conceded there w material difference" in the p facilities and teacher qualif between Negro and white in Topeka, Kans.

A special three-judge co Topeka found that segregation did retard the scholastic progress of Negro children. But the court ruled against Negro parents who sued to get their children admitted to white schools.

The lower court's reasoning was that under a Supreme Court decision handed down in 1896 there was no choice but to approve the school system if equal facilities were offered to both races.

Carter said the Topeka court's decision was that "only physical facilities had to be equal."

Carter argued that in the 1896 ruling the Supreme Court held that no State "can use race alone" as a reason for segregation. Yet, he said, Kansas has admitted it does just that.

Supreme Court Gets New Pleas On Segregation

Delaware and District of Columbia School Cases Presented in Third Day

WASHINGTON, Dec. 11 (UP).—Attorneys for Delaware and the District of Columbia pleaded with the Supreme Court today not to upset racial segregation in schools and thus foment "hatred" between white and Negro students. Attorneys for Negro parents, however, urged the high court to erase the "badge of inferiority" stamped on their children.

The pleas came as the court completed three days of hearings on the question of whether segregation in schools violates the Constitution. The structure of the educational systems in twenty-one states and the nation's capital may hang on the court's decision. A court ruling is not expected for many weeks.

Delaware Attorney General H. Albert Young told the court the controversy raised in his state over segregation in schools was "demoralizing Negro as well as white pupils."

'Outbursts of Hatred'

Milton D. Korman, District of Columbia attorney, warned against "outbursts of hatred" in non-segregated schools and said Congress, not the court, should decide when segregation should be abolished. He said there is "feeling between the races and we cannot hide that fact."

But James M. Nabrit, jr., attorney for a group of Negro parents in the District, argued that school segregation laws are "bills of attainder"—in violation of the Constitution—because they impose punishment without trial.

The court also is considering the constitutionality of school segregation in South Carolina, Virginia and Kansas. Racial segregation likewise exists in schools of seventeen other states.

Mr. Young said the Delaware Supreme Court destroyed the "stability" of the state's school system by ordering the Delaware Board of Education to admit Negro school facilities were inferior. The state court did not rule on the constitutionality of segregation.

Mr. Young said the state was equalizing the schools for both races with all possible speed.

Frankfurter Question

Asked by Justice Felix Frankfurter about the effect of the state court's ruling on the students, Mr. Young replied, "That is the reason I am here now—because of the terrific impact of this decision on the rest of the state. I would rather the court had said: segregation is bad; let the Negro children go to white schools."

Louis L. Redding, Wilmington Negro attorney for the protesting parents, argued that racial segregation laws are "arbitrary and unreasonable and, therefore, unconstitutional."

Mr. Korman argued that the Supreme Court is "not the forum" where the District of Columbia question should be decided. He cited Congressional legislation going back to 1862 in an effort to show that Congress intended to establish separate schools for white and Negro students.

"This dual system was not set up to stamp these people with a badge of inferiority," Mr. Korman said. "There was an intention to help these people recover from human bondage."

But Mr. Nabrit, representing Negro parents who failed in their attempt to get their children admitted to white schools here, argued, "The time to make the change is now. We submit that in this case—in the heart of the nation's capital in the capital of the free world—there is no place for a segregated school system. We cannot afford it and the Constitution does not authorize it."

State's Education Program Hinges On U. S. Hight Court Decision On Segregation

When the Mississippi Legislature will be called into special session to consider equalization of educational opportunities for both races is still the sixty-four dollar question among state officials. It all hinges on an awaited decision by the U. S. Supreme Court on segregation.

A committee studying Mississippi's education problems has completed its recommendations for administrative steps necessary to bring about "separate by equal" facilities for the historically important dual system.

The administrative recommendations have come in form of drafted bills submitted to Gov. Hugh White for study. White has not completed his appraisal of the recommended legislation, but is cautious to call a session before he knows how the Nation's high court will rule on segregation per se.

He observed last week that the whole suggested program in Mississippi may come to naught if the Supreme Court rules out segregation.

The committee among its various suggestions has recommended a program that pursues a course kindered to that recommended by a citizens council on education.

The legislative committee also recommended that the country board of education be vested with responsibilities over all school funds. Boards of supervisors presently handle the valuable 16th section school land revenues in counties of the state.

The recommended program calls for establishment of a state educational finance commission to administer the anticipated $100,000 construction and transportation programs of the state. This would move all spending power from the hands of the state department of education, leaving that agency charged principally with academic and curricula matters.

The committee has vested such a commission with strong powers that control the purse strings of the county school spending. Where counties fail to consolidate and equalize their respective schools systems, the commission would be empowered—if passed by the legislature—to withhold funds for construction.

The committee has yet to announce its recommendations to finance the school program that may cost $20 million dollars more each biennium than the state is now spending.

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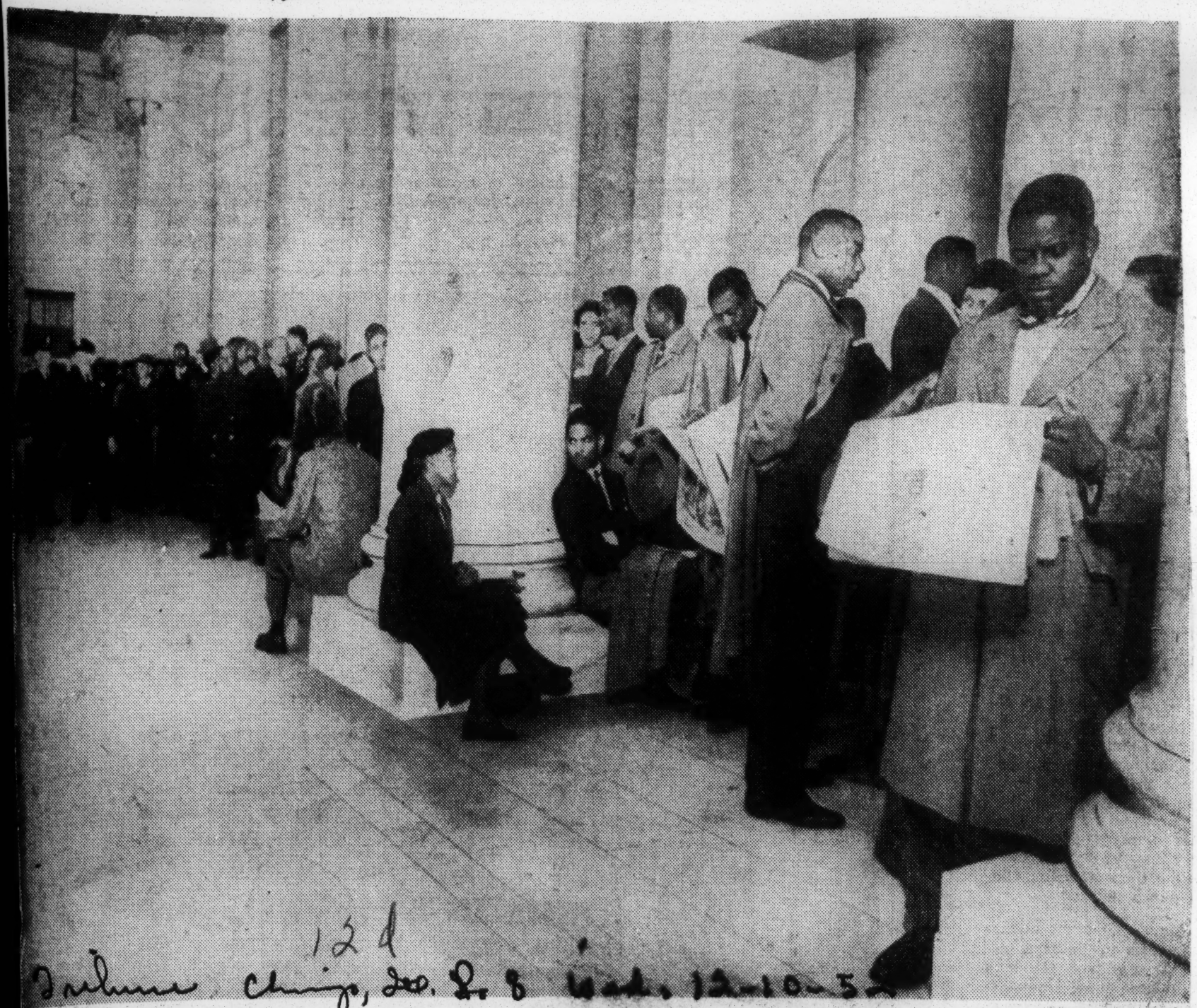

[United Press Telephoto]

Lineup in United States Supreme court building in Washington yesterday as spectators waited to vie for the 50 seats available at opening of arguments on case involving racial segregation of children in schools.

One Of Four Supporting Organizations Files Brief In School Segregation Issue

WASHINGTON, D.C. (NNPA)—Briefs of various organizations as friends of the court have been filed in only one of the four school segregation cases, in which the Supreme Court will hear oral arguments beginning Dec. 8.

The Justice Department has announced that the Acting Solicitor General will file a brief in behalf of the United States, but that brief had not yet reached the court at the close of business last Friday.

The brief on behalf of the United States will probably apply to all four cases — the Kansas, South Carolina, Virginia and District of Columbia.

The Solicitor General is expected to argue that the Supreme Court should re-examine the 6-year-old "separate but equal" doctrine laid down in the Plessy case and hold that segregation in itself is discrimination and violates the Constitution.

Topeka Briefs Filed

The only briefs filed are in the case attacking the legality of jim crow grade schools in Topeka, Kan.

The court denied motions of the National Lawyers Guild and the American Federation of Teachers for leave to file briefs as friends of the court in the Clarendon County, S. C., case. No briefs have been filed by organizations as friends of the court in the Prince Edward County, Va. and the D.C. cases.

Briefs as friends of the court have been filed in the Topeka case by the American Federation of Teachers, the Congress of Industrial Organizations, the American Veterans Committee and the American Jewish Congress.

Teachers Make Point

The Federation of Teachers argues in its brief that the Kansas statute requiring segregation in the schools violates the requirements of the equal protection clause of the Fourteenth Amendment and that the "separate but equal" doctrine is fallacious.

The CIO explains in its brief that its interest in the case is "direct and personal," and that it is endeavoring, through its constituent organizations, to practice non-segregation and non-discrimination in union affairs, but this endeavor has been obstructed repeatedly in the past by statutes, ordinances and regulations requiring segregation in public dining places, meeting halls, toilet facilities, and so forth.

These requirements, either in the form of regulations, statutes or ordinances, rest constitutionally on a line of reasoning and authority identical with that relied on by the court below in the present case. The disposition which this court makes of this case is, therefore, of real and direct interest to the CIO in the regulation of its activities.

CIO Puts In Plea

On the legal points at issue, the CIO argues that the three-judge Federal District Court which heard the Topeka case misinterpreted the Sweatt and McLaurin cases as leaving intact the Plessy doctrine that the provision of separate but equal school facilities did not violate the equal protection clause of the Fourteenth Amendment.

(Editor's note: In the Sweatt case, the Supreme Court ruled that a separate law school established by the State of Texas to give Heman Marion Sweatt a legal education did not afford substantially equal educational opportunities to those afforded white students in the University of Texas Law School, and ordered Sweatt admitted to the latter institution.

(In the McLaurin case, the Supreme Court held that G. W. McLaurin, having been admitted to the U. of Oklahoma Graduate School, could be treated no differently than other students, that is, he could not be segregated because of his color.)

grade schools, it hereby perpetuates inequality between the races and discriminates against colored people in violation of the equal protection clause of the Fourteenth Amendment.

tion. Most of us served overseas. "There was no 'community pattern' of racial discrimination and segregation when the chips were down and there was only the mud, the foxholes, and the danger of the ocean and of mortal combat in the fight to preserve our nation's democratic ideals."

The American Jewish Congress argues that when a state lishes racially segregat

Veterans Speak

Pointing out that the American Veterans Committee is a national organization of veterans who served honorably in the armed forces during World Wars I and II and the Korean conflict, the AVC says in part in its brief:

"We are associated together to promote the democratic principles for which we fought, including the elimination of racial discrimina-

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ISSUE OF SEGREGATION IS NOW CLEARLY DRAWN

Arguments Before the Supreme Court Have Covered All the Phases of a Hotly Debated Legal Question

POSSIBLE DECISIONS FORECAST

By ARTHUR KROCK

WASHINGTON, Dec. 13 — The great legal dispute over whether Congress and the legislatures of the states derive power from the Constitution to require that children of different racial strains be separately educated in the public schools is now squarely before the Supreme Court of the United States for decision after years of delay. The expectation of lawyers who made or heard the three days' argument this week is that months will elapse before the court will announce a conclusion on the most acute political, social and constitutional issue growing out of the race problem in this country since the Dred Scott decision in 1857. But, whatever the ruling, the questions from the bench to the opposing counsel foreshadow a division among the justices.

The Dred Scott decision, in which Chief Justice Taney held for the majority that a Negro born a slave could not become free through residence in a free state or territory, furnished the major political issue between Lincoln and Douglas in their contest for a Senate seat from Illinois in 1858, completed the split between the Northern and Southern wings of the Democratic party and led directly to the election of Lincoln as President in 1860 and the War Between the States.

Reaction in the South

No comparable social and political explosions have been prophesied as consequences of whatever decision the Supreme Court may render on the constitutionality of public school segregation by race and color. But, though lawyers arguing against the legality of the system predicted that the South would peacefully conform to an adverse judgment, counsel for some states where the separation is established as legislative policy expressed grave concern over what might follow there if the court struck down this segregation.

The briefs and arguments submitted in this week's hearings, and questions from the bench, could produce any of the following decisions:

(1) Public school segregation by race, color or similar discrimination of otherwise admissible children of American citizens violates the Fourteenth Amendment (adopted in 1868), which forbids any state to abridge "the rights or immunities" of any citizen or deny him the "equal protection of the laws." The entrenched Supreme Court doctrine of "separate but equal"—holding racial segregation in education legal if the facilities are equalized—is accordingly rejected and superseded because such segregation *per se* is discrimination among citizens, stamping one group as inferior to the other, and that is unconstitutional.

(2) The authority of state legislatures to fix local policy is exceeded when they impose racial segregation in the public schools because that breaches the Constitution. For the same reason the 1866 act of Congress that created the system in the District of Columbia, and subsequent statutes providing for separate maintenance, are illegal.

(3) The system in the states is invalidated by the Fourteenth Amendment on the grounds stated in No. 1 and the first sentence above. But, since this amendment refers to the states only, Congress is not thereby prohibited from establishing and maintaining public school segregation in the District of Columbia. Its continuation is, therefore, a question for Congress to decide.

Question of Jurisdiction

(4) The Supreme Court lacks jurisdiction because the issue affecting the states does not present a Federal question. And in the District of Columbia, which is Federal territory, the question is one of legislative policy over which Congress has authority. Moreover, since the same Congress in which the Fourteenth Amendment was drafted and submitted to the states established public school segregation in the District of Columbia, the Supreme Court concludes that Congress intended the amendment should not restrict its right to establish the system, which the body of the Constitution did not forbid before the amendment was ratified.

With these alternatives, and probably others obscure to laymen, it is obvious that the Supreme Court has a wide choice. It may even take cognizance of one argument made against segregation in the District—that it violates Article 55 of the Charter of the United Nations, which, being a treaty, is the supreme law of the land. But that one is so loaded with political and legal dynamite that the court may ignore it.

The "separate but equal" doctrine that the Supreme Court is now asked to abandon was first laid down in *Plessy v. Ferguson* (1896). It applied to public transportation. In *Cumming v. County Board of Education* (1899) the court extended the doctrine to public education, and in *Berea College v. the State of Kentucky* (1908) further extended it by upholding a Kentucky statute that prohibited private schools from admitting both Caucasians and Negroes.

But with respect to interstate transportation, including service in dining and sleeping cars, and in the area of higher education, the Supreme Court in recent years has been moving away from past decisions and toward the enfeeblement of the "separate but equal" doctrine. In cases coming up from Missouri, Oklahoma and Texas the court decided that:

Missouri must either furnish Negro law students with facilities equal to those at the state university or admit them thereto. And Oklahoma must give them the same training as whites at graduate schools and at the same time. Oklahoma, which lacked certain educational facilities for Negroes, could not isolate a Negro student for class-work at the state university and establish this as "separate but equal." Texas, even if its law schools for the two races were "physically" equal, was not providing one Sweatt with equivalent legal education if it barred him from white classes where the teaching admittedly and necessarily was superior.

Sweatt Decision

The Sweatt decision, though it left standing the old ruling that "separate and equal" met the requirements of the Constitution, made so exacting a definition of "equal" as to bring into question whether any state with segregation could meet the requirement in the graduate and professional schools provided for Negroes.

So it can be seen that the Supreme Court has gradually been chipping pieces off the doctrine that was proclaimed in the Nine-

'HIS DAY IN COURT'

Seibel in The Richmond Times-Dispatch

would be amending the charter by judicial fiat in of the one process the tion provides for its own ent.

e Supreme Court can, if it will, take any of these positions.

"flexible" enough to permit what was constitutional in the nineteenth century to be held unconstitutional in the twentieth, which

EDUCATION IN REVIEW

Psychological Factor in Segregation Is Crux of School Cases Before Supreme Court

By BENJAMIN FINE

The United States Supreme Court was asked last week to end school segregation now in effect in seventeen Southern and border states and the District of Columbia. This is generally conceded to be one of the most important issues in the field of education that has come before the highest tribunal in many years. The final verdict will have tremendous social and educational impact.

Before the Supreme Court are five cases relating to the constitutionality of racial segregation in the nation's public schools. These originated in South Carolina, Virginia, Kansas, Delaware and the District of Columbia. For the first time, the Supreme Court is being asked to rule upon the laws in the Southern states that prohibit Negro children from attending "white" schools. The court has ruled, in several decisions promulgated during the last few years, that Negroes are to be admitted to the state universities in cases where adequate educational facilities are lacking in the state for non-white students.

The National Association for the Advancement of Colored People has taken the lead in pleading the cause of non-segregation. Hitherto the arguments have centered around the "separate but equal" doctrine enunciated by the court in 1896. The courts have held that where educational facilities are equal, the separation of white and Negro children is constitutional.

'Emotional Impact' Stressed

Now, however, the association has raised another issue, that of equality of emotional as well as intellectual conditions. Thurgood Marshall, counsel for the group, held that segregation by itself was bad, regardless of the type of school facilities provided. He said it made the Negro children feel that they were of an inferior race and humiliated them. This, in his opinion, was far more serious than physical facilities, teaching standards or curricula of the schools.

Indeed, it was brought out that the school facilities in Topeka, Kan., were just as good for Negroes as they were for white children. The lawyers for those opposing segregation emphasized that the "emotional impact" of school segregation could not be measured in terms of physical supplies and equipment. As one of them said: "Equal educational opportunity does not stop with equal physical facilities."

Decisions in the McLaurin v. Oklahoma State Regents and Sweatt v. Painter, which held that segregation of Negro students at the University of Oklahoma and at the University of Texas, respectively, was unconstitutional, were cited by the NAACP in behalf of the assertion that educational facilities alone were not at stake. In the above-mentioned decisions, the question of "intangibles" such as prestige, teaching standards and academic surroundings was raised.

Kansas Case

The Kansas case appears to be clear-cut in its implications for those who argue that physical facilities alone are not enough to warrant a segregation policy. Negro children in Topeka had to pass schools set aside for whites only and travel distances from a mile and a half to two miles in order to attend an all-Negro school, held by the parents of these children to be inferior. A suit filed by NAACP lawyers in 1951 asked the United States District Court to invalidate the Kansas segregation statute.

A decision by the three-judge court upheld the legality of segregation. However, the court made this rather significant statement—significant, that is, from the educational point of view of the current issue:

"Segregation of white and colored children in public schools has a detrimental effect upon colored children. The impact is greater when it has the sanction of the law; for the policy of separating the races is usually interpreted as denoting the inferiority of the Negro group. A sense of inferiority affects the motivation of a child to learn. Segregation with the sanction of law, therefore, has a tendency to retard the educational development of Negro children and to deprive them of some of the benefits they would receive in a racially integrated school system."

The court, accepting the "separate but equal" doctrine found in the Plessy v. Ferguson ruling of 1896, noted, however: "If the denial of the right to commingle with the majority group in higher institutions of learning as in the Sweatt case and gain the educational advantages resulting therefrom, a lack of due process, it is difficult to see why such denial would not result in the same lack of due process if practiced in the lower grades."

Psychologists' Statement

A "statement of experts," prepared by thirty-two social scientists and educators, has been filed in behalf of the NAACP, citing the "effects of segregation and the consequences of desegregation." The psychiatrists, psychologists, sociologists and other educators agreed that "regardless of facilities which are provided, enforced segregation is psychologically detrimental to the members of the segregated group." They also held that it was detrimental to members of the majority group. In their opinion, segregation can be removed without "outbreaks of violence."

What is the impact of these arguments on the South? Several of the Southern states, notably South Carolina, Georgia and Mississippi, have warned that they would abandon the public school system before they admitted Negroes to their white schools.

On Nov. 4, 1952, the voters of South Carolina ratified an amendment sponsored by Gov. James F. Byrnes which empowers the State Legislature to abandon the public school system in the event of a Supreme Court decision invalidating segregation. The Governors of Georgia and Mississippi have likewise threatened to abandon the public school system. In the meantime, these states, and others in the South, have started costly plans to improve and equalize the schools. This is being done, it is assumed, in the hope that the court will not order the end of segregation, but will reaffirm the "separate but equal" doctrine.

Improvement of Facilities

Millions of dollars are being allocated for a building program, to construct new schools for Negro children. The states involved have an enrollment of 9,821,000 white pupils and 2,397,000 Negroes in the public schools. But in many communities the ratio is reversed. The attorney for South Carolina, John W. Davis, told the court that there were 2,799 Negro school children and only 295 white pupils in the South Carolina school district involved in the controversy.

Most of the Southern states have raised the educational standards of Negro teachers. Their salaries have been increased, and they have attained, in a number of instances, financial parity with the white teachers. School supplies and equipment have been brought to the Negro schools, to help equalize the educational programs. More money is now being spent to improve Negro education in the South than ever before.

But the issue, as outlined before the Supreme Court, goes beyond the constitutional grounds of physical equality. The major arguments now revolve around the question of segregation per se, of "inferiority" of race. The final decision may not be handed down for some months. Educators and laymen, not only in the states directly involved but throughout the nation, will find the decision, whatever it is, of much more than academic interest.

Four Negro Applicants Turned Down Since 1948

WASHINGTON, D. C. — (NNPA) — Just as the Supreme Court was ready to hear arguments that segregated and high schools are unconstitutional, the State of Florida renewed the argument that "separate but equal" school facilities on the graduate and professional level are legal.

The State of Florida filed its brief last Friday in the case of four colored youths, who have been seeking admission to the University of Florida unsuccessfully for more than four years.

"NO FEDERAL VIOLATION"

In its brief, the State of Florida contends that it may refuse to admit these youths to the university, solely because of their color, without violating the Federal Constitution, by providing them "separate but equal" facilities in a comparable tax supported institution within the State as promptly as it provided them for white students

The Supreme Court scheduled for argument, beginning Tuesday afternoon, cases from four States — South Carolina, Virginia, Kansas and Delaware — and the District of Columbia.

These cases present the question of whether "separate but equal" grade and high schools are constitutional. In them the Supreme Court is being asked to hold that state-imposed segregation in itself is discrimination that violates the Fourteenth Amendment.

5 ORIGINAL APPLICANTS

Originally, five colored persons applied to the University of Florida on April 4, 1948, for admission. They are Virgil Hawkins, who sought admission to the School of Law; Rose Boyd, who sought admission to the School of Pharmacy; Oliver Maxey, who applied for courses in graduate chemical engineering, and Benjamin Finley, who applied for courses in graduate agriculture.

The fifth applicant, William T. Lewis, appears to have withdrawn from the litigation.

The application of these individuals were referred to the Board of Control, which has complete control and management of the State's institutions of higher learning, subject to the State Board of Education.

At a hearing May 13, 1949, the applicants were informed that they could not be admitted to the University of Florida because state law provides that only white students may be admitted to that institution.

CITE FAMCEE FACILITIES

They also were informed that the schools and courses for which they had applied had been authorized to be set up at Florida A. and M. College, but had not been actually established, and they were offered out-of-state scholarships equal to any courses offered at any state institution in Florida.

The applications refused the schol arships and filed petitions in the Florida Supreme Court for writs of mandamus to compel their admissions to the university.

The State contends that the summer school, for which the applicants had applied, had expired long before the State was required to file its answer, and that they made no further application for any subsequent term at the University of Florida until 1952.

The Board of Control, in its answer filed January 7, 1950, referred to Florida laws prohibiting the admission of other than white students to the university.

The answer stated that the Board of Control, by resolution of December 21, 1949, had established at Fla. A. and M. the courses and schools requested by the colored petitioners and that upon their application they would be admitted to that institution.

The answer also stated that if necessary and equal facilities, equipment and personnel for any of the courses were not immediately available at Florida A. and M., instruction would be given the petitioners at the University of Florida until adequate and comparable facilities and personnel for the courses of study, substantially equal to those at the university, were functioning at Florida A. and M.

The petitioners filed motions on January 19, 1950, for the issuance of the writs ordering their admission to the university.

The Florida Supreme Court Aug. 1, 1950, held that out-of-state scholarships were not sufficient compliance with the Fourteenth Amendment

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File Briefs In Toneka, S. C. Suits

Frontal Attack On Segregation Set For Oct. 14

WASHINGTON, D.C. (NNPA)—Federal District Courts erred in refusing to apply the principles of the Sweatt and McLaurin decisions to the Clarendon county, S.C., and the Topeka, Kas., school-segregation cases, the National Association for the Advancement of Colored People told the United States Supreme Court last Wednesday.

The cases are scheduled for the October 14th calendar.

In briefs filed in appeals to the high court in these two cases, the NAACP contended that, although the decisions in the McLaurin and Sweatt cases related to education on the graduate and professional level in state-supported schools, the underlying principles of those two cases are applicable and controlling in cases involving racial segregation in public education on the elementary and high school levels.

The Sweatt Ruling

The Supreme court ruled in the Sweatt case that Heman Marion Sweatt was unable to obtain a legal education in a segregated law school equal to that afforded white law students in the University of Texas Law School and that the state of Texas had to admit him to the latter institution.

In the McLaurin case, the Supreme Court held that Prof. George W. McLaurin, having been admitted to the graduate school of the University of Oklahoma, could be treated no differently than other students. The decision wiped out efforts to segregate McLaurin and other colored students from white students at the University of Oklahoma.

The Clarendon county case was brought originally in the Federal District Court at Charleston, S.C., by a group of colored school children and their parents against the board of trustees of School District 22 of that county.

It was alleged in the complaint that the segregated schools for colored children were in all respects inferior to the white schools, that colored children were excluded from the white schools under the "Jim Crow" laws of South Carolina, and that it is impossible for colored children to obtain a public school education equal to that afforded white children as long as these "Jim Crow" laws are enforced.

NAACP Attorney Object

During the trial, testimony was introduced showing the extent of the physical inequalities in the colored schools.

Over objections of NAACP attorneys, lawyers for the trustees offered testimony that a 3 per cent sales tax and authorization of a $75,000,000 bond issue for improvement of schools had recently been adopted by the state of South Carolina and that the State Education al Finance Commission had just been organized to supervise the distribution of these funds.

Call Nine Experts

The testimony of nine expert witnesses, called by NAACP lawyers, was that the colored schools was inferior to that afforded white aspect and that the caliber of education offered to colored children was inferior to that afforded white pupils.

The expert testimony also established that segregation of colored pupils would, in itself, preclude them from receiving educational benefits equal to those afforded white pupils or pupils in a non segregated school.

The State admitted that the educational facilities, equipment, curricula and opportunities afforded colored pupils were not equal to those afforded white pupils.

But the special three-judge court, splitting 2-to-1, held that neither provisions requiring segregation in public schools violated the Fourteenth Amendment and refused to issue an injuction against enforcement of those provisions.

Inequalities Exist

The court, however, found that inequalities existed and ordered the trustee board to furnish colored pupils educational facilities, equipment, curricula and opportunities equal to those furnished white pupils.

The district court ordered that the school trustees report to it within six months as to the action taken by them to carry out the court's order.

The NAACP appealed to the Supreme Court. After the appeal was docketed but before its consideration by the high court, the trustees on December 21, 1951, filed their report in the District Court showing the progress made toward equalization of physical facilities.

The Supreme Court last January 28 vacated the judgement of the district Court and remanded the case to that court to obtain the views of the District Court upon the additional facts contained in the report and to give that court an opportunity to take whatever action it deemed appropriate.

Justices Hugo Black and William O. Douglas dissented. They said they believed that the additional facts contained in the report were irrelevant to the consititutional questions raised by the appeal.

The NAACP filed in the District Court a motion for judgment. At a second hearing held last March 3, the trustees filed an additional report showing the progress made since the previous report had been filed.

At the second hearing the District Court ruled that the question of the constitutionality of South Carolina laws requiring segregated schools was closed by the original judgment and could not again be argued.

The District Court also refused to rule that the admitted lack of equal facilities entitled colored pupils and their parents to an injunction restraining the trustee board from excluding them from the white schools.

In its opinion of last Mach 13, the District Court found that school facilities for colored children were not substantially equal to those afforded white pupils but that the plaintiffs were not entitled to an injunction forbidding segregation in the public schools. From that judgment the NAACP again appeal ed.

The NAACP argues in its brief in the Clarendon County case that the South Carolina "Jim Crow" school laws are unconstitutional under a uniform line of decisions of the Supreme Court striking down governmental distinctions based solely on race or ancestry.

In the Topeka case, colored elementary school pupils and their parents brought suit in the Federal District Court for Kansas on March 22, 1951, to enjoin enforcement of a Kansas law on the ground that it deprives colored children of qual educational opportunities

A special three-judge court on August 3, 1951 refused to issue an injunction. The NAACP appealed from that judgment.

Assuming that segregated school in Topeka are not inferior to other elementary schools there, the N. A.A.C.P. contends, unconstitutional inequality lies in the retardation of intellectual development and colored children suffer as a result of enforced isolation in school from the general school population.

Under a state law permitting first-class cities to maintain segregated elementary schools, Topeka has eighteen elemenatry schools for white pupils and four for colored. Segregation is in the first six grades only. There is no racial segregation in Junior and senior high schools there.

HIGH COURT PUTS OFF SEGREGATION HEARING

Public School Case Delayed For Two Months

WASHINGTON, Oct. 3.—(INS)—The Supreme Court Thursday postponed for two months a hearing to determine whether segregation of white and Negro children in public schools is permitted by the Constitution.

The court took the action, with Justice Douglas dissenting, to permit a segregation case pending in Washington, D. C., to be appealed to the highest tribunal.

In making the announcement, the court also said it will consider a second segregation case between Prince Edward County, Va., school officials and Negro parents.

The court previously planned to open hearings next week on segregation laws in Kansas and South Carolina. In view of the Washington and Virginia developments, it delayed oral arguments until Dec. 8.

In connection with the Washington case, the court noted that this is the first time a law of Congress relating to school segregation was being challenged.

Denies Review Of Ruling On Segregation

Monday the United States Supreme Court in effect ruled that railroads may no longer require colored passengers to travel in separate Jim Crow coaches. Negro leaders here hailed the court ruling. However they see no immediate abandonment of segregation on trains in Louisiana and elsewhere in Dixie.

They feel that complete abandonment will come within the next few years with the continued improvement in racial relations.

What happened was that on Monday the highest court in the nation at Washington, D. C., rejected an appeal from a lower court ruling that separate coaches for white and Negroes is in violation of the United States Constitution.

The case grew out of an incident on June 28, 1948 when Prof. William C. Chance, 65-year-old principal of Rocky Mount, North Carolina, while traveling from Philadelphia to his hometown, was forcibly removed from a train of the Atlantic Coast Line Railroad company at Emporia, Virginia and was arrested upon a charge of "disorderly conduct", when he refused to comply with the railroad's segregation regulation in force as to coach passengers south of Richmond.

He thereafter filed suit in the United States District Court for the Eastern District of Virginia, Richmond Division, which Court, after a week-long trial, held that the regulation could validly be enforced against an interstate passenger.

On appeal, however, to the United States Court of Appeals for the Fourth Circuit, that Court, on January 27, 1951, held that the regulation in question, as applied to an interstate passenger, was an unlawful burden on interstate commerce, in violation of Article I, Section 8 of the Constitution of the United States.

On May 28, 1951, the Supreme Court of the United States denied the petition of the Atlantic Coast Line Railroad Company for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit holding the railroad's segregation regulation invalid as applied to interstate passengers.

The Supreme Court's refusal again on Monday, Nov. 10, 195 to review the decision of the Court of Appeals is considered effectively outlawing the application of carrier segregation rules and regulations to interstate passengers.

High Court To Consider D. C. School Segregation

Agrees to Take Up Constitutionality With Three State Cases in December

By Chalmers M. Roberts
Post Reporter

The Supreme Court yesterday in effect agreed to consider the constitutionality of the District's segregated public school system.

In an unusual three-page unsigned opinion, the Court also postponed oral argument on the two school segregation cases it already had agreed to consider —involving South Carolina and Kansas—until the week of December 8, a month after the Presidential election.

At the same time, the court formally agreed to consider a Virginia case from Prince William County which also attacks a state's right to segregate its white and Negro school pupils.

Arguments on the three state cases had been set for October 14 and 15 but many observers had felt a postponement past the election likely. The Court last spring, in effect, put off the South Carolina case until the term just begun.

Spring Opinion Probable

Although all three State cases as well as the District case will be argued in December, no opinion is expected until next spring. It might not come until the end of the court term in June, about the time schools close for the summer.

The justices were unanimous for considering the District case with the others but Justice William O. Douglas dissented from postponing argument and decision in the three State cases.

The opinion noted that the three State cases all contend racial segregation is, in itself, a violation of the Constitution's fourteenth amendment which sets forth that the States may not deny any person "equal protection of the laws."

But the District case, which grew out of the attempts of Negro students to enroll at Sousa Junior High, a white school, rests on a different legal issue.

Basis of District Case

"In that case," the Supreme Court said yesterday, "the appellants (the children, their parents and the Consolidated Parent Group, Inc.) challenge the appellees' (the Board of Education's) refusal to admit certain Negro appellants to a segregated white school in the District of Columbia; they allege that appellees have taken such action pursuant to certain acts of Congress; they allege that such action is a violation of the fifth amendment of the Constitution."

The announcement said that "the court is of the opinion that the nature of the issue posed in those appeals now before the court involving the fourteenth amendment, and also the effect of any decision which it may render in those cases, is such that it would be well to consider, simultaneously, the constitutional issues posed" in the District case.

Hence, the court said it would now "entertain" a petition to have the District case moved from the Court of Appeals—where it is on the docket but not yet set for argument. An assistant to George E. C. Hayes, who represents the Negroes bringing the suit, said last night that the request would be made quickly. The court did not say it would automatically accept the case but left little room for doubt that it would, "to the end that arguments may be heard together in all four of these cases" the week of December 8.

The three State cases all attack the half-century old doctrine that there be "separate but equal" schools for the two races.

In the Sousa Junior High School case, the Negro students and parents are contending that the segregated schools here violate the Fifth Amendment which states that Congress may not deprive anyone "of life, liberty or property without due process of law." It also is contended that the United Nations Charter is violated as well, as the Civil Rights Act and Article One of the Constitution.

The District case was dismissed in District Court on April 4, 1951, by Judge Walter M. Bastian with the comment that the case "will make history." He said it raised an important issue, but that he had no alternative but to dismiss it in the light of a 1950 Court of Appeals ruling as well as the "separate but equal" doctrine enunciated in the Plessy vs. Ferguson case of 1896.

The 1950 ruling, by Judge E. Prettyman, declared that the many congressional acts on which the District's segregated schools are based "cannot be read with any meaning except that schools for white and colored children were then intended to be separate."

The Board of Education, represented by Corporation Counsel Vernon E. West and his assistant, Milton D. Korman, argued that any change in the segregated school policy here was for Congress, sitting as Washington's city council, not the Courts, to determine.

The 1950 ruling involved Negro students at Browne Junior High School. The court split 2-to-1 but the case never was appealed to the Supreme Court. That ruling, however, turned on the relative facilties offered Negro and white students rather than on the constitutionality of segregation in itself, the issue in the Sousa case.

Supreme Court Outlaws Segregation on Trains

WASHINGTON, Nov. 10—(UP)—The Supreme Court struck down a Southern racial tradition today by ruling that "Jim Crow" railroad cars which separate Negroes from white passengers are unconstitutional.

The order, handed down without a written opinion, presumably applies to interstate bus transportation as well. It upheld a lower court decision that railroads no longer may forbid Negroes to travel in the same cars with white passengers.

Railroad passenger segregation has been a common practice in Southern states except aboard north-to-south through trains. Despite today's ruling, Negro leaders believe it will take several years and many court cases before "Jim Crow" coaches are removed completely.

They said segregation in buses has caused even more disturbances than railroad rules.

In another segregation case, the Supreme Court agreed to review a complaint against separation of Negro and white students in District of Columbia schools.

The court also:

1. Took no action on the second appeal of Ethel and Julius Rosenberg, convicted atomic spies awaiting execution in Sing Sing prison.

2. Rejected the appeal of New York gambler Frank Costello, who has started serving an 18-month sentence for contempt of Congress.

3. Agreed to review the constitutionality of Michigan's Communist control law which is similar to the so-called McCarran Internal Security Law of 1950. Many states also have parallel laws.

Arguments on the District of Columbia case will be heard with three similar cases in Virginia, South Carolina and Kansas next month. These cases are aimed at the "separate but equal facilities" doctrine which holds that segregation in itself is not discriminatory.

The railroad case, appealed by the Atlantic Coast Line Railroad was started by William C. Chance Negro school principal of Parmelee, N. C., who was arrested for refusing to change from a white to Negro coach in 1948.

Chance sued the railroad for $25,000 damages after the conductor put him off the train. His case was supported by the National Association for the Advancement of Colored People.

Lower courts held that segregation in travel placed an unconstitutional burden on interstate commerce, and the high court agreed.

U. S. Supreme Court To Rule On Alabama Electors Bill

WASHINGTON, D. C.—(SNS)—After agreeing to review an Alabama Supreme Court ruling which held electors have the right to vote for anyone they choose, the United States Supreme Court has scheduled a hearing for next Monday.

A decision by the Supreme Court on this case, which is an outgrowth of the South's anti-Truman revolt, is expected to determine for the first time just how much authority presidential electors have.

The decision could also have a direct bearing on the traditional two-party system itself.

The court battle developed when the Alabama State Democratic executive committee decided candidates running in the May 6 primary must pledge to support the regular party nominee for President this year.

The ruling was issued to prevent repetition of the 1948 bolt when Alabama's 11 electors, who ran as Democrats, refused to vote for President Truman. Their votes were among the 39 in five Southern states that went to the States Rights ticket.

STATE COURT AGREES WITH STATES RIGHTERS

States Righters refused to sign the party loyalty pledge this time and the Alabama State Supreme Court agreed they didn't have to.

The Alabama Court said the 12th amendment to the Constitution guarantees an elector's independence and that it can't be violated at any point in the election process.

The court did, however, make a point of observing it is a federal question and that there has been no "authoritative pronouncement" from the federal courts.

The Supreme Court has been asked to decide:

1. Are electors completely free to cast votes for the candidates of their choice, or must they yield to party ties?

2. If they are free agents, can they be restricted at any step along the way, as by a loyalty oath before they can enter the party primary?

Ultimatum to Railroads:

End Segregation By End of Year

NEW YORK—The National Association for the Advancement of Colored People is "prepared to take the necessary legal steps against all of the Southern railroads" if any segregation in interstate commerce remains after the first of the year, Thurgood Marshall, NAACP special counsel, said here this week.

Commenting on the refusal of the United States Supreme Court to review an appeal by the Atlantic Coast Line from a lower court decision holding that segregation of passengers is an undue burden on interstate commerce, Mr. Marshall said this decision, together with previous decisions striking down segregation on interstate motor vehicles and in dining cars, "should be enough to break down segregation in all interstate transportation."

ATLANTA — Despite a U. S. Supreme Court ruling against jim-crow railroad passenger cars, Governor Herman Talmadge claimed last week that Georgia can continue rail segregation.

Governor Talmadge said he believes Georgia can continue to enforce its rail segregation laws, since the nation's highest tribunal did not rule "specifically" on Georgia laws.

"Past experience," Mr. Marshall said, "has, nevertheless, made it appear doubtful that the Southern railroads will follow the law as set down by the Supreme Court." He added that the legal defense staff of the association, before taking further legal action, would give the railroads until the first of the year to revise their rules "so as to prohibit all segregation in the coaches as well as the Pullman cars and dining cars throughout the South."

Mr. Marshall extended "hearty congratulations" to the Virginia State Conference of NAACP branches and its lawyers, who have handled the case from the time that William C. Chance was ejected from an ACL coach in June, 1948, for refusing to move to a jim-crow car. He said the association considers the question of segregation in transportation "one of the most important issues of the country today" and added that the high court's action "signifies the early removal of all jim-crow transportation."

* * *

WASHINGTON (ANP) — Legally, jim-crow in interstate travel is dead. The United States Supreme Court last week upheld a lower court ruling that the Atlantic Coast Line Railroad in separating Negro and white passengers placed an unconstitional burden on interstate commerce.

While many Negro leaders were rejoicing over the decision, many others were looking for the answer to this question: "Will this ruling be enforced? When?"

Two principal forms of racial segregation may be affected by this action—bus transportation and railroads. The cattle cars behind the engines for colored people has been a basic part of the South ever since Reconstruction Days. The curtains on buses have been typical since the automobile becamme popular.

Most colored leaders feel that Negroes will have to file lawsuits to really halt jim crow on Southern railroad lines.

Another Chip Off Segregation

(New York Herald Tribune)

Jim Crow has suffered another defeat. In the latest case involving racial discrinimation on Southern railroads the Supreme Court declined to hear the appeal of the Atlantic Coast Line. The facts were simple. A North Carolina school principal, William C. Chance, returning home from Philadelphia in 1948, had been removed from the train in Virginia when he refused to transfer to a coach segregated for Negroes. The Circuit Court of Appeals held that Mr. Chance was within his rights, stating that the railroad's rule "unlawfully burdens interstate commerce" and therefore violated the constitutional clause which rests such regulation with Congress. What the Supreme Court thought is not on the record; it just let the lower court's opinion stand.

The Supreme Court has so far moved rather cautiously on whether segregation itself is a denial of the constitutional guaranties of due process and equal protection. It nevertheless appears to be inching up to the big decision. In the fields of processional and graduate education the principle has been established in recent years that equal quality of teaching and learning is impossible where a color line exists. Whether this may also ultimately apply further down the line, even in elementary and high schools, remains to be seen. There are cases before the Supreme Court from Virginia, South Carolina, Kansas and the District of Columbia, with arguments set for next month. It is quite possible that the court will still avoid coming to grips all at once with the fundamental question. But the trend is definitely forward. The Negroes have won the vote, Jim Crow is being hammered down: in every way, through courts, legislatures and social forces; the dilemma of racial discrimination in democracy undergoes reduction by the determined efforts of people of good will.

12d 1952

Brotherhood of Railroad Trainmen

Case Argued In Supreme Court

Brotherhood And St. Louis-San Francisco Railway Involved

WASHINGTON, D. C.—(NNPA)—The United States Supreme Court has under advisement the question of the right of the Brotherhood of Railroad Trainmen to bar colored "train porters" from performing "head-end" braking work on the St. Louis-San Francisco Railway.

The Brotherhood is seeking a reversal of a decision of the Eighth United States Circuit Court of Appeals at St. Louis ordering the District Court to enjoin the enforcement of an agreement of March 7, 1946, between the union and the railroad to give the braking duties of the train porters to white brakemen.

* * *

THE CASE WAS argued before the high court last Tuesday by Charles K. Judge, a St. Louis lawyer, for the Brotherhood, and Joseph C. Waddy of Washington and Victor Packman, of St. Louis, attorneys for Simon L. Howard, Sr..

Howard originally filed suit against the brotherhood and the Frisco March 29, 1946. His action was a class suit on behalf of himself and all other train porters on the Frisco.

* * *

HOWARD ASKED an injunction to prevent the Frisco from hiring white brakemen to replace the train porters.

* * *

COLORED RAILROAD workers are excluded from membership in the BRT, and the BRT was one of four brotherhoods which forced the Frisco through the National Mediation Board on March 14, 1928, to make a contract that after that date only white men would be hired in train, engine, and yard service.

In his argument, Mr. Waddy repeatedly emphasized that the term "train porter" is a racial badge applying only to colored head-end passenger brakemen. He told the court that the Frisco requires its train porters to perform the duties of head-end brakemen on its passenger trains as well as the portering duties of keeping the cars clean while en route and assisting passengers on and off the trains.

* * *

THE ONLY RAILROAD employees performing head-end braking duties and porters' duties on passenger trains are colored employees, he said. White employees performing head-end braking duties on passenger trains are designated "brakemen," he added.

Train porters spend 95 per cent of their working time performing head-end braking duties and the remaining 5 per cent performing portering duties, he asserted.

He indicated that the designation "train porter" was given to colored men performing head-end braking duties by the railroads to keep from paying them the wages of brakemen.

* * *

HISTORICALLY, he said, prior to World War I, it was the practice of railroads never to pay colored employees the same rates of pay paid to white performing the same duties, and they resorted to all sorts of practices to keep from equalizing wages.

In 1918, while the railroads were under federal control, he said, the wages of all persons performing brakemen's work were equalized, and all persons performing certain duties were classified as brakemen and paid brakemen's rate of pay. He said the BRT recognized them as brakemen at that time.

* * *

IMMEDIATELY AFTER the Government returned the railroads to private management in 1921, the Frisco called in its colored brakemen and, without changing their duties, cut their pay in half and reclassified them as "train porters."

Mr. Waddy told the court that the Frisco designated one of the train porters as "general chairman" for the train porters and coerced the train porters one by one into ratifying the reclassification and reduction in pay.

* * *

AT THAT TIME, he said, the

Trainmen's Suit Goes To Supreme Court

The U. S. Supreme Court on Tuesday, (April 22), heard arguments in a suit filed on March 29, 1946, charging that the lily-white Brotherhood of Railway Trainmen denies equal job opportunity to Negro trainmen. The suit was filed by a trainman with 38 years of experience—Simon L. Howard of Memphis, Tenn., and is actively supported by the association of Colored Railway Trainmen and Locomotive Firemen. The case was first heard in a Federal District Court. On appeal to the U. S. Circuit Court of appeals, a decision favorable to Mr. Howard and job equality was handed down. The white BRT then appealed to the highest court, and the nine justices listened to arguments Tuesday. It will be several weeks at least before a decision is rendered in the highly important case. Among the thirty-odd trainment in Washington for the hearing were these twelve. Left to right, front row: Mr. Howard, the plaintiff; John W. Whittaker of Albany, Ga., president, International Association of Railway Employees; S. H. Clark of Roanoke, Va., grand president, Association of Colored Railway Trainmen and Locomotive Firemen; J. S. Little Jr., of Norfolk, national general chairman; R. L. Edwards of Roanoke, grand secretary-treasurer; and Hurley Bibbs of San Francisco, Cal., general chairman of the trainmen's alliance of that city. Second row, left to right—R. L. Edwards, Junius Russell, Wm. Pennington, David Williams, Russell Walker, and James Wilkerson.—(Journal and Guide Photo)

'train porters" were unorganized and not represented before management. A small committee was formed to fight the action of the Frisco. A suit for back wages and for reclassification, filed by them as unorganized workers with the United States Railroad Labor

Simon L. Howard, left, of Memphis, Tenn., plaintiff in the suit of colored trainmen against the Brotherhood of Railway Trainmen for equal job rights, chats in Washington, D. C. with C. S. Pennington of Kansas City, Mo., center, and Junius Russell, of Norfolk.

The conversation took place just before Mr. Howard entered Supreme Court Chambers Tuesday for a hearing on the appeal of the Brotherhood of Railway Trainmen of a favorable U. S. Circuit Court of Appeals decision in the celebrated case, first filed on March 29, 1946.—(Journal and Guide photo)

The Standard American Choice For Alabama

THE United States Supreme Court has reversed the Alabama Supreme Court. The federal court has ruled that, *under laws enacted by the Alabama legislature*, the Democratic Party of Alabama has power to exclude gate-crashers such as the Dixiecrats.

This means that Alabama can now have an orderly election process like the rest of America.

It does *not*, as the frantic Dixiecrats say, mean that any Alabama voter is disfranchised.

It means that anybody can join the club, but when he joins, he agrees to abide by the rules of the club.

What Alabama will have is the *standard American* choice between a Republican presidential ticket and a Democratic presidential ticket.

That choice is good enough for the American people. Why isn't it good enough for Alabama?

★

THE Dixiecrats thought it great stuff when the Alabama court nullified over a century of custom through which presidential electors were the dog tags about the presidential nominee's neck, that and nothing more.

The Dixiecrats are sore vexed that the United States Supreme Court has overruled the state court. Naturally they are explaining the ruling in terms of the fact that the court members were appointed by Roosevelt and Truman.

We leave them to their wheezing, pausing only to point out that two Roosevelt appointees — Douglas and Jackson—dissented and thus upheld the state court of which the chief justice is a famous Dixiecrat; and that the majority upheld the law of the Alabamians, Justices Simpson and Brown.

We thus find Chief Justice Livingston of the Alabama court, a Dixiecrat with oak leaf cluster, and Federal Justices Douglas and Jackson, who are considerably decorated with Distinguished Service Crosses of the New Deal, ruling together as one.

★

THE ADVERTISER is presently unable to measure the scope of the federal ruling. But it seems to be a historic decision and should not be narrowly viewed as Alabama's cross-to-bear.

Chiefly, it seems to put Alabama in harmony with the rest of America.

It is important to place Alabama where it fits in the national election pattern. It is important to understand, as the victorious brief showed, that presidential electors have fallen into such dummy status that in 21 states their names don't even appear on the ballot.

The brief quotes one authority thus:

> In 27 states candidates for presidential elector are nominated *by party conventions;* in 7 by party primaries; and in 11 by party committees.
>
> The laws of Arkansas and North Carolina permit nominations either by party convention or primary.
>
> Pennsylvania has a unique and very realistic system in that the law provides that *the presidential candidate of each party shall nominate the presidential electors . . . for his party.*
>
> The electors nominated in these various ways are, in elections, expected, and in some states required by law, to vote for their party's candidate.
>
> Three states—California, Oregon and Massachusetts—go so far as to bind their electors by law.

★

THAT should make it plain that there is nothing strange about the doctrine that presidential electors are properly mere vending machines. You insert your nickel and out comes the candy bar of *your* choice—not the candy of the *machine's* choice.

Allowing presidential electors discretion to cast Alabama's 400,000 votes for any presidential candidate they chose would be a reversion to the discredited system by which United States senators were once elected by legislatures rather than by direct popular vote.

★

IT IS properly asked, if a standard American choice between the Republican and Democratic Parties is a fundamental source of strength to the American governmental system and is acceptable to most American citizens, why the Dixiecrats are so passionately bent on making the Democratic primary a free-for-all open to men of all parties.

It is important for Alabama citizens to understand that the answer lies in the fact that the hue and cry comes principally from the politicians, *not the voters.*

It is important to understand that the politician—a party officeholder like Mr. McCorvey or, say, a county tax collector—has a *vested interest* in maintaining his Democratic chastity, nominal though the chastity be.

That vested interest—in no way discreditable—is maintaining eligibility to run in Democratic primaries, under which tent all politics is carried on in one-party Alabama.

Thus Mr. McCorvey wants to defeat the Democratic presidential nominee, but wants to call himself a Democrat while so doing. Similarly, when in 1948 the Dixiecrats kidnapped the Rooster, the Loyalist, Senator Hill, voted against Mr. Truman, this being the only way to stick with the Rooster.

Most of our politicians are going to insist on calling themselves Democrats, even though their course is actually in indirect support of a Republican.

That is, had the Dixiecrat electors of 1948 been pledged to Thomas E. Dewey, Senator Hill would have voted for Dewey.

★

BUT the voter has no such vested interest. *His career and job are not related to party loyalty.*

All the voter wants is the best president available and, if possible, a little more take-home pay.

Therefore, in 1952, *the voters should largely ignore the politicians*, whose judgment is disqualified because of their vested interest in their Democratic chastity, and do their own thinking.

In November, Alabama voters should step up to the booth—in step with America—and cooly vote their choice between the Democratic and Republican nominees.

Doomed Negroes Lose Attack on Jury System

Supreme Court Denies North Carolina Method Results In Unlawful Racial Discrimination

By The Associated Press

Washington, Feb. 9.—The Supreme Court rejected today the claim of four North Carolina Negroes that unlawful racial discrimination was used in the picketing of the juries that doomed them to death.

The high court wrote 40,000 words in disposing of the cases.

Justice Reed wrote the 6-to-3 mapority opinion, upholding the constitutionality of North Carolina's system of selecting jury panels composed of property owners and poll-tax payers.

Two of the death sentences the court refused to overturn are for murder, the other two for the rape of white women.

Cross-Section Reflected

"Our duty to protect the federal constitutional rights of all does not mean we must or should impose on the States our conception of the proper source of jury lists, so long as the source reasonably reflects a cross-section of the population suitable in character and intelligence for the civic duty," Reed wrote.

"Short of an actual census or required population registration, these tax lists offer the most comprehensive source of available names. We do not think a use, nondiscriminatory as to race, of the tax lists violates the 14th Amendment, nor can we conclude on the evidence adduced that the results of the use require a conclusion of unconstitutionality."

Held Not Impartial

Justice Black, who wrote one dissenting opinion and concurred in another written by Justice Frankfurter—as did Justice Douglas—said that the evidence showed "a partial abandonment of the old discriminatory jury practice" in North Carolina.

"Since 1949 a small number of Negroes have regularly been summoned for jury duty," Black said, "but proof of a lesser degree of discrimination now than before 1949 is insufficient to show that impartial selection of jurors which the Constitution requires. . . .

"I do not believe the court should permit this tax-list technique to be treated as a complete neutralizer of racial discrimination."

The four Negroes concerned are under sentence to die in the gas chamber at the State Prison in Raleigh.

2 Sentenced In Slaying

Bennie Daniels and Lloyd Ray Daniels were sentenced to death for the slaying of a white taxi driver. Raleigh Speller and Clyde Brown each received a death sentence for the the rape of a white woman.

In other decisions today the court:

1. Ruled 8 to 1 that the Attorney General lacks authority to deport a permanent resident alien on the basis of "confidential information" without giving him a hearing.

The court did not touch on what authority the Attorney General would have to have to order the deportation of Kwong Hai Chew, who made the appeal, after giving him "reasonable notice of the charges against him and allowing him a hearing sufficient to meet the requirements of procedural due process."

Married U. S. Girl

Kwong, a Chinese Nationalist, was admitted to this country on several occasions as a seaman and in 1946 married an American girl and bought a home in New York.

When he returned from a voyage to the Far East in April, 1951, the Attorney General ordered him permanently excluded from the country. He was denied a hearing before a special board of inquiry.

2. Upheld 6 to 3, the conviction of three persons accused of conspiring to bring aliens into this country as spouses of U. S. veterans under the War Brides Act.

Marcel Max Lutwak, Munio Knowl, and Rebina Treitler were convicted in federal court in Chicago. Each received a two-year sentence and a $10,000 fine.

Results In Phony Marriages

The Government charged that the conspiracy resulted in phony marriages in Paris for the sole purpose of getting Knowl, his brother, Leopold Knowl, and Munio's divorced wife admitted to this country as nonquota immigrants.

3. Upheld, 6 to 2, a new Illinois tax law which increased levies on trucks, busses, tractors, and trailers.

The law was attacked by groups of operators of such vehicles as having created an unlawful burden on interstate commerce.

The increased levies were included in a 1951 amendment to the Illinois Motor Vehicle Law. They were estimated to yield some $28,000,000 annually.

They Will Make Decision In Segregated School Cases

Members of the United States Supreme Court who this week heard arguments in five cases involving segregated schools in four states and the District of Columbia. They have been asked to rule on the constitutionality of the "separate-but-equal" system of schools. They are Justices Felix Frankfurter, Washington; Hugo L. Black, Alabama; Chief Justice Fred M. Vinson, Kentucky; Justices Wiley B. Rutledge, Iowa; William O. Douglas, Washington; Tom C. Clark, Texas; Robert H. Jackson, New York; Harold H. Burton, Ohio, and Sherman Minton, Indiana.

Labored To Prepare Data On School Segregation Cases

Here are the NAACP attorneys who labored on the big job of preparing briefs and other data for the historic session in the U. S. Supreme Court, this week, on whether segregated schools are constitutional or not. From left: front, Harry Merican, New York City; Herbert Reid, Washington; Robert C. Carter, New York City; Louis L. Redding, Wilmington, Del.; Jack Greenberg, New York City; Dr. James M. Nabrit, Washington; Charles Quick, Cleveland; Spottswood Robinson III, Richmond; William Coleman, Philadelphia; rear, Thurgood Marshall, chief NAACP counsel, New York City; James A. Washington, Dorsey E. Lane, Julian Dugas, George E. C. Hayes, Dr. George S. Johnson and Howard Jenkins, all of Washington; and Oliver Hill, Richmond.

Southern Jitters

(From The Sun-Reporter)
San Francisco, California

The Southern part of the United States is as jittery today as if suddenly a volcano had sprung up in the middle of the area. The reason for the Southern jitters is the fact that the U. S. Supreme Court has announced that it will rule soon on the cases testing segregation in public schools.

The cases pending before the Supreme Court involve schools in Clarendon County, South Carolina; Prince Edward County, Virginia; and Topeka, Kansas.

The Court may rule, (1) that segregation in elementary and high schools is unconstitutional EVERYWHERE; or (2) that segregation is valid, under the law, if facilities are EQUAL. The Court has the alternative of ruling on the specific cases, or ruling sweepingly.

In the South Carolina and Virginia cases a ruling for separate and equal facilities might solve the situation. But Topeka, Kansas, complicates the problem because here the precise question involved is whether segregation is unconstitutional per se.

In the light of the experience of Southern graduate schools where Negroes have been admitted without incident, we wonder why all the furore over elementary and secondary schools.

The Southerners rejoin by explaining that segregation between adolescents in the schools is particularly vital to the maintenance of the social structure of the South.

Evidence of its vital importance is the passage of "preparedness measures" by Southern state legislatures.

In South carolina, the people have approved and amendment to state constitution sponsored by Governor Byrnes, which would enable the state to discontinue public education. It has been suggested that South Carolina schools be turned over to the churches.

In Georgia, a law was passed, with the backing of Governor Talmadge, which provides that no state funds shall go to any publicly supported insfitution for whites which admits Negroes.

In Virginia, although Governor Battles had expressed personal disapproval of the type of legislation passed in South Carolina and Georgia, he has indicated that a special session of his state legislature would be called in case the Supreme Court outlaws separate schools.

Kentucky's experience in integrating college students in the past two years would seem to indicate that outlawing segregation in the public schools in that state would not be too explosive.

A large group of Southerners seem ready and willing to provide equal facilities—if separate. The financial obligations concurrent with this system might become a tremendous factor in forcing Southern communities to integrate. In areas where there are large concentrations of Negro students the problem would be relatively simple. But in some counties there are few Negroes, widely scattered. Local school boards might waver considerably between providing a 50- or 75-thousand-dollar building with a full compliment of qualified equally-paid teachers for a handful of Negro students, or admitting them to already-established white schools. In the State of West Virginia, more than a half dozen counties with only a few Negro children have admitted them to white schools for a good many years. There has been no trouble.

For the Southerners who hope some regional arrangement can be worked out whereby several counties can combine in maintaining facilities for Negroes, the unanimous ruling of 1949 of three Southern judges of the 4th U. S. Circuit Court of Appeals, is discouraging. Their opinion in a case involving a regional institution in Virginia held that its was an unconstitutional procedure since the Negro children had to travel longer distances to regional high schools than the white children had to travel to their local high schools. This case has not been carried up to the Supreme Court, but it is unlikely that the Supreme Court decision in this case would be more conservative than the attitude of the Southern judges.

From our point of view, we can't see how the Supreme Court —if they face their full responsibility—can do less than outlaw segregation in the public schools, EVERYWHERE.

Whatever happens, the impact of the decision will affect all Negroes in America. But the effect of this decision on America's prestige and integrity in the world of nations is even more crucial.

Segregation Seen Up to Legislatures

By LUTHER A. HUSTON
New York Times News Service
Special to The Atlanta Constitution

WASHINGTON, Dec. 10—Segregation of pupils in the public schools on the basis of color is not a question of constitutional rights but of legislative policy, John W. Davis told the Supreme Court today. For that reason, he argued, the court should not set aside as unconstitutional the segregation statutes enacted by the states.

Davis, veteran constitutional lawyer, who was the Democratic presidential nominee in 1924, was arguing for the state of South Carolina in the attack being made in the Supreme Court against its segregation laws. The laws of Kansas, Virginia, Delaware and the District of Columbia also are invoked in arguments which began yesterday and will end tomorrow.

RIVAL STAND

Opposing Davis in the South Carolina case, Thurgood Marshall, Negro attorney speaking for the National Association for the Advacement of the Colored People, contended that the constitutional rights of Negroes could not be weighed against the policies of South Carolina or other states.

Segregation is unconstitutional under the Fourteenth Amendment which forbids any abridgement by the states of the rights of United States citizens, Marshall asserted. That was the basis upon which he asked that the provision in the South Carolina constitution which establishes segregation in the schools be set aside by the Supreme Court.

DAVIS FEARS

Davis had warned that removal of the barrier between white and Negro pupils in the public schools would create a situation "one cannot contemplate with any equanimity." Marshall, however, said the people of the South "are not lawless" and will abide by whatever ruling the high court may hand down.

Arguments in the Kansas case were heard yesterday. The South Carolina and Virginia cases were completed today and the District of Columbia case was begun. It will be completed tomorrow, followed by the Delaware case. The court will then take the issues under advisement with no indication that an early ruling is in prospect.

ROOM CROWDED

The courtroom was filled to capacity when the second day of arguments began and again several hundred people formed a line in the corridor hoping to get in. This line, however, was smaller than yesterday.

The issues became more complicated as the arguments continued and questions asked by the justices from the bench appeared to reflect perplexity over some of the problems involved.

The Supreme Court, in a ruling handed down in 1896, laid down the doctrine which still stands that segregation in the schools did not violate the Constitution provided equal facilities were provided for pupils of each race. The questions indicated that some justices must be convinced that there is compelling reason for overthrowing this doctrine.

BURTON ASKS

On the other hand, questions asked by Justice Harold H. Burton and other members of the court raised the point of whether changed conditions might not now warrant some revision of the "equal facilities" doctrine.

Justice Robert H. Jackson posed a new question when he asked lawyers arguing the Virginia case what would happen if Congress enacted a law that segregation was contrary to public policy. This seemed to have been inspired by the argument of Davis that it was a question of legislative policy, rather than constitutional rights.

Spottswood Robinson III, Negro attorney of Richmond, answered that he did not think Congress could pass legislation, under the Fourteenth Amendment, that would remedy the situation.

An international twist also was given to the issues when the Negro attorneys in the District of Columbia case charged that the segregation laws of the district violated the charter of the United Nations, as well as the Constitution of the United States. Section C, Article 55, of the charter, pledges all members to promote "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion."

Segregation is mandatory under the South Carolina constitution and the current case arose when Negro pupils in Clarendon County, a rural area, sought an injunction to compel admission of Negroes to schools provided for white children. Davis pointed out that there were 2,799 Negro school children and only 295 white pupils in the school district involved in the controversy.

Davis argued that the policy of school segregation was set up under the Fourteenth Amendment, rather than in violation of it. Congress, he said, had never altered the policy, citing jurisdiction, as evidence that Congress considered segregation as coming within the scope of the amendment.

He also cited what he called a "vast body" of court rulings, wise legislation and learned people that has supported the constitutionality

of school segregation over a period of 90 years.

"What is the great national policy underlying this whole question?" Davis asked. "Is it not the fact that the very strength and fiber of our federal system is local self government in those matters for which local action is competent?

"Is it not a question which most nearly approaches the hearts and minds of the people—the question of educating their young?

"Is it not the height of wisdom that the manner in which this education is conducted be left to those most immediately affected and the wishes of the parents—white and colored—be ascertained before forcing children into contacts that may be unwelcome?"

Tension can arise in mixed schools as easily as in segregated schools, Davis asserted.

Marshall deprecated the thought that trouble might follow removal of segregation barriers. He said that in the South "white and colored kids walk down the road together on their way to school, separate and go to separate schools, and then play together.

Court Asked To Outlaw Dual Schools

Highest Tribunal Hears Arguments For and Against Segregated System

By Chalmers M. Roberts
Post Reporter

The Supreme Court yesterday plunged into the possible consequences of an end to segregated public schools as it began consideration of their constitutionality.

The hushed courtroom was jammed and several hundred persons waited outside in hope of hearing part of the arguments in the five historic cases, perhaps the most fateful in Negro history since the Dred Scott slavery decision of 95 years ago. The lawyers' arguments will be resumed at noon today.

Questions by several justices indicated they were gravely concerned by the possible consequences of action on their part which might end the dual school systems which exist in whole or in part in the District and in 21 of the States.

But inferences from questions by the justices are always dangerous. Justice Felix Frankfurter yesterday prefaced one question with the statement that "in a case of this kind particularly, a question does not imply an answer, only an eagerness for education."

It was Frankfurt who asked about the consequences of reversing lower court rulings affecting Kansas, South Carolina and the District.

Assistant Attorney General Paul E. Wilson of Kansas replied that "in perfect candor I must say to the court that the consequences would not be serious" in his State. He added that Negro teachers and school administrators would have to be assimilated in the other schools but "I can imagine no serious consequences beyond that." Kansas is one of four States with partial school segregation.

Thurgood Marshall, counsel for the Negroes seeking to end the South Carolina dual school system, later replied to the same question by Frankfurter about District schools.

"Most of the schools here," he said, "would be integrated except perhaps in the concentrated northwest area" where few Negroes live. He added that it would be up to school authorities to decided just how to work it out and that lawyers would enter only if racial bars were kept by subterfuge.

In South Carolina, said Marshall, chief counsel for the National Association for the Advancement of Colored People, "I don't think anything is going to happen any more than in the graduate schools." Such schools were opened to Negroes by 1950 Supreme Court rulings with no consequent difficulty.

Marshall said that if the high court were to reverse the lower court ruling holding that segregation is constitutional and then send the case back to the lower federal court the order "wouldn't put anybody in any school" at once.

"All we're asking is to take off this state imposed segregation," he told the justices. The "important thing is to get the principle established," he said, adding that "it goes without saying" that local school boards would have time to adjust to the new conditions—"perhaps two months" in one case "six months" in another.

When Marshall intimated that school boards in the South might even draw new boundary lines which would put large numbers of one race in one school area, Frankfurter exploded with:

"You mean we might have gerrymandering?"

And he went on to say that "nothing would be worse for this court than to make abstract statements against segregation and then have them defeated by tricks." Gerrymandering is a political practice of drawing boundary lines for congressional districts in such a way to include those on your side and exclude as many as possible of your opponents.

But while Frankfurters, a former Harvard Law School professor who usually asks more questions than all other justices combined, opened up this one line of inquiry, he pounded equally hard at another. He noted that there has been a "long line of decisions" by State courts upholding segregated schools as well as rulings by the Supreme Court on various angles of segregation, a mass of history "almost more impressive than any one single decision" which could be cited on the other side.

Yet he conceded to Robert L. Carter of New York, Marshall's assistant who argued for the Negro pupils in the Kansas case, that the issue of segregation's constitutionality in the primary grades "has not been adjudicated" by the Supreme Court thus far, that "it is here for the first time."

The central constitutional issue raised in the five cases—from the District, Kansas, South Carolina, Virginia and Delaware—is whether the current practice of "separate but equal" schools for Negroes and whites squares with the Constitution. Involved are the Fourteenth Amendment in the State cases and the Fifth in the District which is under the direct control of Congress.

Marshall declared that "our position is not that we are denied equality but that we are denied 'equal protection of the laws'" as guaranteed in the Fourteenth Amendment.

The attorney contended that segregation laws "perpetuate slavery." He said that "expert testimony" given in the South Carolina case showed that there was "no recognizable difference between children by race" and that "given a similar learning situation" any "one does as well as the other on the average."

The "separate but equal" doctrine springs from the 1896 Plessy vs. Ferguson decision of the Supreme Court.

At one point yesterday Chief Justice Fred M. Vinson noted that in that decision the majority opinion did not apply its ruling directly to school segregation. It was a railroad case.

And Justice Harold H. Burton commented at another point that Carter's position appeared to be that "there is a great deal more to the educational process than what you read in a book." Carter replied that "equal educational opportunity does not stop with equal physical facilities."

Justice Stanley F. Reed then asked:

"Did the testimony on racial segregation in the lower court deal with the emotional and mental development of the child? Did it relate to his ability to learn?"

Carter replied that the lower court in the Kansas case found as a matter of fact that because of segregation in itself "you are not able to learn as well as you would in a mixed school."

At another point, Justice Burton asked whether Wilson did not recognize "that the change in 75 years of social and education conditions" might mean "what may have been a valid interpretation is no longer so." He added quickly that "that would be different from saying they have been wrong for 75 years."

Justice Hugo L. Black asked Wilson where Indians go to school in Kansas—in the white or Negro schools. Wilson said most of them live on reservations but would go to white schools if they lived in the cities which have segregated systems.

Justice Robert H. Jackson also asked about Indian pupils. Marshall said they were in a "preferred position so far as Negroes are concerned." And when Jackson asked why Indians haven't fought harder in the courts against discriminatory practices, Marshall said they "haven't had the judgment or the wherewithal to bring law suits."

To this Jackson added: "They don't have a Thurgood Marshall."

Yesterday saw completion of the Kansas argument but only part of the South Carolina case. John W. Davis, representing the State and the Clerendon County school district, had time only to list the points he will argue today and discuss the State's "surge for educational reform" under "the present governor," former Justice James M. Byrnes.

After the South Carolina argument is completed, the court today will take up the Virginia and District cases though the latter may not be concluded until Thursday. The Delaware case will end the oral arguments. Written opinions by the court's nine justices are not expected for many months.

WORDS OF LEADERS HAUNT THEM

DuBois, Caliver Help S. C. Fight For Separate Schools

Agric-Chronicle p. 22 Date 12-6-52

WASHINGTON

Statements of two colored leaders are being used before the Supreme Court to support the continuation of segregated schools.

The statements, made by Dr. W. E. B. DuBois and Dr. Ambrose Caliver are contained in the brief filed by the State of South Carolina, which is defending its system of jim crow schools.

The brief, written by John W. Davis, seeks to convince the court that abolition of segregation would be harmful to both white and colored pupils alike.

Dr. DuBois's defense of segregation is taken from an article "Does the Negro Need Seperate Schools?," he wrote back in 1935 for the Journal of Negro ducation.

The opinion of Dr. Caliver was contained in a survey he prepared fer the Journal of Negro education while serving as senior specialist.

Mixed Schools Ruled Out

Dr. Caliver is quoted in the brief as saying:

"In some of the states the mores of racial relationships are such as to rule out, for the present at least, any possibility of admitting white persons and Negroes to the same institutions."

Dr. DuBois wrote:

"It is difficult to think of anything more important for the development of a people than proper training for their children; and yet I have repeatedly seen wise and loving colored parents take infinite pains to force their little children into schools where the white children, white teachers and white parents despised and resented the dark child, made mock of it, neglected or bullied it, and literally rendered its life a living hell.

"Such parents want their child to 'fight' this thing out — but, dear God, at what a cost!

"Sometimes, to be sure, the child triumphs and teaches the school community a lesson; but even in such cases, the cost may be high, and the child's whole life turned into an effort to win cheap applause at the expense of healthy individuality.

Might Ruin Character

"In other cases, the result of the experiment may be complete ruin of character, gift and ability and ingrained hatred of schools and men.

"For the kind of battle thus indicated, most children are under no circumstances suited. It is the refinement of cruelty to requite it of them.

"Therefore, in evaluating the advantage and disadvantage of accepting race hatred as a brutal but real fact or of using a little child as a battering ram upon which its nastiness can be thrust, we must give greater value and greater emphasis to the rights of the child's own soul.

"We shall get a finer, better balance of spirit, an infinitely more capable and rounded personality by putting children in schools where they are wanted, and where they are happy and inspired, than in thrusting them into hells where they are ridiculed and hated."

High Court Hears School Cases

WASHINGTON (NNPA)— The Supreme Court is hearing arguments on elementary school segregation cases from four States—South Carolina, Virginia, Kansas and Delaware—and the District of Columbia.

These cases, the hearings on which began Tuesday, present the question of whether "separate but equal" graded and high schools are constitutional. In them the Supreme Court is being asked to hold the state-imposed segregation in itself is discrimination that violates the 14th Amendment.

At issue in three of the cases—the Clarendon County, S.C., Topeka, Kan., and Prince Edward County, Va. ones—is the validity of state statutes and constitutional provisions by which colored and whtie children are segregated in public elementary and secondary schools.

Dat. 12-13-52

Anti "Separate-Equal"

These three cases are before the Supreme Court on appeal from lower court decisions which upheld the constitutionality of segregation on the basis of a Supreme Court decision handed down over 50 years ago.

P. 9

That decision, made in 1896 in the Plessy vs. Ferguson case, formulated the "separate but equal" doctrine, which asserted the right of the states to enforce segregation laws provided equal facilities were made available to both races.

The present cases challenge this ruling. All are supported by the NAACP.

Delaware, D.C. Cases

Two other cases involving this issue, one originating in Delaware and the other in the District of Columbia, are also being heard by the court at the same time.

Seventeen local and national groups, Friday, asked the court to wipe out public school segregation in the District of Columbia.

The brief cites the fact that Washingtonians today mingle without regard to skin color in many restaurants, movies, hotels, libraries, swimming pools, golf courses, tennis courts and playgrounds, in all legitimate theaters, streetcars and buses, art galleries and music halls and in every public building and auditorium in the city.

Washingtonians also attend interracial nursery schools, parochial schools, colleges, law schools and medical schools, it added.

What Proper Reason?

"If young people, young and old, can live next door to each other in apartment houses, can walk or these doors to study together in public schools established in the interest of all the people, by a government dedicated to democracy?" the brief asks.

"If young people, young and old, can live next door to each other in apartment houses, can walk or ride together as far as school doors, and can enter together in private schools, what proper reason may be adduced to prevent them from entering these doors to study together in public schools established in the interest of all the people, by a government dedicated to democracy?" the brief asks.

Dat. 12. 13-52

The groups signing the brief are:

American Council on Human Rights; Americans for Democratic Action, Washington chapter; American Jewish Congress Commission on Law and Social Action, Washington chapter; Catholic Interracial Council of America, Commission on Community Life of the Washington Federation of Churches, District of Columbia Industrial Union Council, CIO;

D.C. Federation of Civic Associations Inc.; Friends Committee on National Legislation; Japanese American Citizens League, Washington chapter; Jewish Community Council of Greater Washington, NAACP, Washington branch;

Unitarian Fellowship for Social Justice, Washington chapter; Washington Bar Association; Washington Ethical Society, Washington Fellowship; Washington Interracial Workshop, and Washington Urban League.

It is expected that the last case to be offered will be Delaware which was not put on the calendar for agrument until Nov. 24.

It includes two actions—one, on behalf of a high school student in Claymont, Del., and the other on behalf of a 7-year-old girl seeking admission to an elementary school in Hockessin, Del. These two cases were consolidated and tried in a court of chancery.

The plaintiffs won and the State of Delaware appealed to the State Supreme Court, which sustained thr trial court.

'INEQUALITY ALONE UNCONSTITUTIONAL':

Justice Department Urges End To School Segregation

WASHINGTON

Any inequalities between facilities in schools for colored and white children is alone a violation of the 14th Amendment to the U.S. Constitution, the Department of Justice declared in a brief filed with the Supreme Court this week.

Moreover, the brief, filed as a friend of the court in the five school segregation cases slated for argument Tuesday in the Supreme Court, stated the 56-year-old "separate but equal" doctrine should be re-examined and overruled.

On the other hand, in a brief filed by Vernon E. West, corporation counsel, on behalf of the D.C. board of education in defense of its segregated school system, it is argued that even slavery was constitutional under the Fifth Amendment which prohibits the federal government from "depriving any citizen of life, liberty or property without due process of law."

Note Of Optimism

Striking a note of optimism, the brief proposes that should the court find that separate but equal school systems are unconstitutional, it remand the state cases to the district courts "with instructions to devise and execute a program to achieve orderly and expeditious transition to a non-segregated system."

Signed by Attorney General James P. McGranery and Philip Elman, a special assistant, the brief states that the federal government considered it appropriate to file a brief in the school segregation cases "because of the national importance of the constitutional questions presented."

Violates 'Basic Right'

"The constitutional right invoked in these cases is the basic right, secured to all Americans, to equal treatment before the law," the brief asserts, adding:

"The cases at bar do not involve isolated acts of racial discrimination by private individuals or groups.

"On the contrary, it is contended in these cases that public school systems established in the states of Kansas, South Carolina, Virginia, and Delaware, and in the District of Columbia, unconstitutionally discriminate against citizens solely because of their color.

"This contention raises questions of the first importance to our society. For racial discrimination imposed by law, or having the sancton or support of government, inevitably tends to undermine the foundations of a society dedicated to freedom, justice and equality."

Particularly Acute In D.C.

The Justice Department adds that the problem of racial discrimination is "particularly acute" in the District of Columbia because Washington is "the window through which the world looks in to our house."

It points out that embassies, legations and representatives of all nations are in Washington.

"Foreign officials and visitors naturally judge this country and our people by their experiences and observations in the nation's capital," the brief states, "and the treatment of colored persons here is taken as the measure of our attitude toward minorities generally."

An examination of the five cases may show that none of them presents "inescapably" the question of whether "separate but equal" public schools for white and colored children are unconstitutionally unequal, the Attorney General and his assistant state.

In none of the cases, they point out, is there a finding by a district court that the separate schools are equal in educational benefits and opportunities afforded both white and colored children.

Specific Findings Enough

In the Virginia, South Carolina, and Delaware cases, they note, physical inequality, apart from segregation, was "expressly found."

"The specific findings of inequality in those cases make it unnecessary to go further in order to establish that plaintiffs' constitutional rights have been violated," the brief states, adding:

"Failure of a state to provide 'equal' educational facilities to some of its citizens, solely because of their race or color, is without more a violation of the 14th Amendment."

The district courts, having made such findings in the Virginia and South Carolina cases, the Justice Department states, erred in not immediately ordering the admission of colored children into the Prince Edward County, Va., and the Clarendon County, S.C., public schools for white children.

Renews Telling Argument

The government renews the argument it made in cases involving the admission of Heman M. Sweatt into the University of Texas law school and of equal treatment of G. W. McLaurin after his admission into the University of Oklahoma graduate school.

That argument is that the "separate but equal" doctrine is wrong as a matter of constitutional law, history, and policy.

The Justice Department contends that "compulsory racial segregation is itself, without more, an unconstitutional discrimination."

" 'Separate but equal' is sometimes described as an 'ancient' doctrine of constitutional law," the brief states. "But its antiquity dates not from the adoption of the 14th Amendment in 1868 but from a judicial expression which did not make its appearance in the reports of this Court until 1896.

"This judicial contraction of the constitutional rights secured by the Amendment is irreconcilable with the body of decisions which preceded and followed Plessy v. Ferguson, and is not justified by the considerations adduced to support it."

Other Groups Join Fight

Six organizations active in the field of civil rights and civil liberties last Monday also jointly filed a brief in the Kansas school segregation case which is pending before the United States Supreme Court.

While the brief applied specifically to the Kansas case, the groups, pointed out that their arguments apply with equal force to the four companion cases which also are before the court.

The other cases are the South Carolina, Virginia, District of Columbia, and Delaware cases.

The groups on whose behalf the brief was filed are the American Civil Liberties Union, American Ethical Union, American Jewish Committee, Anti - Defamation League of B'nai B'rth, and the Unitarian Fellowship for Social Justice.

Segregation Cases Ended In High Court

District, Delaware Pleas Argued Last; No Ruling Likely Until Next Spring

By Chalmers M. Roberts
Post Reporter

Nine and a half hours of lawyers' arguments before the Supreme Court over constitutionality of segregated public schools in the District and in 21 States ended yesterday.

The nine justices now will discuss the arguments among themselves in private conference, try to find a majority of at least five of their number who will agree on a way to decide the momentous cases and then write one or more opinions.

No ruling is expected until Spring at least. It might not come until near the end of the term, around June 1. It is even possible that all five cases now before the court might not be decided tobgtheraonhttaoin tao decided together.

Yesterday was devoted to the District and Delaware cases, which presented legal questions quite different from those of Virginia, South Carolina and Kansas, argued Tuesday and Wednesday.

The range of possible decisions is limited only by the legal imagination of the nine justices. They could, as asked by the attorneys for the Negro children seeking admission to white schools, strike down the half-century-old doctrine that "separate but equal" schools are constitutional. They could rule, as Justice Hugo L. Black suggested yesterday, that segregation might square with equality in one State but not in another.

They might state flatly that segregation is permissible under the "separate but equal" doctrine. They might rule that, as the States have argued, the issue is not one for the courts but for the State Legislatures. Or they might, as Justice Robert H. Jackson suggested, point out that the Constitution's fourteenth amendment allows Congress to act to end segregation in the States, and it has undoubted power to act in the District.

Hence the net result could be anything from retention of present school segregation to its complete abolition, although hardly the latter at one fell swoop. The justices' questions have made one thing clear at least: they are much concerned with the effect of any move on their part which would strike down all or part of the segregated school system.

As Justice Felix Frankfurter put it yesterday, there is a "whole broad problem of relief" for the Negro children bringing the cases "assuming rights are involved." The first problem for the justices will be to determine whether any constitutional rights are, in fact, violated by segregation.

Since only four States and the District are actually concerned in the cases before the court, a ruling would have immediate effect only on them. In fact, it would affect only single school districts or boards of education in the four States. But any general ruling would soon force action in the remainder of the four States immediately involved, and later in all other States with any form of school segregation.

Several of the justices at one time or another referred to the suggestions of Attorney General James P. McGranery for what Justice Jackson yesterday called "a gradual correction of this situation."

Milton D. Korman, assistant corporation counsel for the District, said it might harm the ability to learn of both races if they were "thrown together."

Opposition Detailed

But James M. Nabrit, jr., representing the Consolidated Parent Group, Inc., which tried to enter Negro children in Sousa Junior High, a white school, said "there is no place for a segregated school system . . . in the capital of the free world."

At one, Korman declared that "these people haven't enjoyed from them" and 'these people any right that'h been taken are denied nothing." Then he added, referring to the Negro attorneys, that 'my friends say this is the time for a change."

At this Justice Jackson smilingly commented, "we've been promised a change."

"It's time for a change" was the Republican campaign theme and President-elect Dwight D. Eisenhower has said he believes in the elimination of "every vestige of segregation" in the District.

For Proper Channels

Korman replied that he would not object to a change if it "comes through proper channels." He said that 'perhaps this is the time. I don't know. But that argument should me made o Congress."

Then Korman proceeded o list the partial breakdown of segregation in the District. He said Negroes are now admitted 'to all legitimate theaters," to a number of movie houses and downtown restaurants and to "many of our larger and better hotels," all without interference from the courts.

"Leave this issue where it constitutionally belongs," with Congress, he said. "There is no constitutional issue."

Korman gave a detailed history of the District's public schools from the abolition of slavery in the city by Congress in 1862 until today. He said the whole aim of setting up separate Negro schools was to "elevate" the former slaves, "not to put a badge of inferiority" on them.

Apellate Ruling Cited

He told how Negro educators in the past supported segregation. He cited a Court of Appeals ruling specifically upholding the dual system.

Nabrit told the justices that when free Negro schools were begun here public education, especially the compulsory attendance law, was "suspect." He conceded Congress has annually appropriated funds for the dual system, but contended this may not be said to "permit or authorize" segregation.

The attorney said segregation violates the fifth amendment's "due process" clause and is a bill of attainder, a singling out of Negroes "because of some status, position, matter of birth."

Nabrit, in rebuttal, said that the changes in the Washington segregation pattern mentioned by Korman have a bearing—they show that an end of segregation here "would cause no problem."

"He is a citizen," fighting in

Unsegregated in Korea

an unsegregated Army in Korea, Nabrit said.

The Delaware case is unique among those before the court. The state's Supreme Court upheld a lower court ruling which ordered two white schools in the Wilmington area to admit Negroes on the grounds that their separate facilities were not equal. It held that the Negro students' rights were personal and present and hence ordered immediate action.

(The National Association for the Advancement of Colored People, which brought all the state cases, reports that as a result about a dozen Negro children this fall began attending white schools.)

Albert Young, Delaware's Attorney General, argued that such "immediate relief" was not called for because the state was acting rapidly to wipe out inequality of school facilities. He noted that the state court held that separate schools were constitutional if equal.

Young said that the State court, in effect, was "indirectly abolishing segregation."

But Louis L. Redding, attorney for the Negro students, contended that the students now admitted to white schools are "under threat" of expulsion when new facilities are ready.

He asked the court to consider the finding of the lower Delaware court that segregation itself harms Negro students. But Justice Felix Frankfurter commented that such testimony is "very subtle" and that "it's all a matter of opinion."

Last of 13 to Speak

Jack Greenberg, also arguing for the children, was the last of 13 attorneys to speak over the three-day hearing. He, too, declared that the Negro students were open to "resegregation" whenever the State considers facilities have been equalized.

A statistical summary presented by Virginia showed that, on the basis of the 1950 census, the 17 States and the District with complete school segregation contain 69.95 percent of the Nation's Negro population or 10,522,495 of 15,042,692. The four States with permissive and partial segregation account for 73/100 of 1 percent more while the 27 unsegregated States contain 29.32 percent or 4,410,000 of the Nation's Negro population.

Arguments open in five school segregation tests

BY PAUL M. YOST

WASHINGTON, Dec. 9—(AP)—The Supreme Court today will be asked to settle the question of whether sending Negro and white children to separate public schools violates the Constitution.

Such racial segregation is challenged in cases arising in four states and the District of Columbia. The final decision will affect 13 other states which maintain completely or partially segregated schools.

Arguments began late this afternoon and may continue through Thursday, for a total of 10 hours of the court's time. The prolonged legal debate boils down to this simple issue:

* * *

WILL THE HIGHEST tribunal now overturn—or reaffirm—an 1896 Supreme Court decision which established the "separate but equal" doctrine? The doctrine is that segregation is constitutional if equal facilities are provided for both races.

The National Assn. for the Advancement of Colored People, a leader in the fight against segregated schools, says "segregation impairs educational development of its victims."

"Race as a factor in the selection of students for admission to public schools," the association contends, "is a constitutional irrelevance, which cannot be justified as a classification based upon any real difference which has pertinence to a valid legislative objective."

Segregation in itself is discrimination, the association argues, and therefore violates the 14th Amendmen to the federal Constitution, which says on state may deny any person the equal protection of the laws.

THE ARGUMENT WILL BE presented by Association Counsel Thurgood Marshall.

John W. Davis, Democratic nominee for president in 1924, will be among attorneys making replies. In a preliminary brief he declared: "The [illegible] the adoption of the amendment (after the Civil War) compels the conclusion that it has no such scope as is claimed. Under that amendment, the right

The other states directly involved in the arguments are Virginia, Kansas and Delaware. The case involving District of Columbia schools falls under the due process of law clause of the Constitution's Fifth Amendment, which applies to the federal government. Congress makes the laws for the District of Columbia.

Counsel for the district's school board said in a preliminary brief that a series of congressional enactments set up a dual school system for the district. The brief as-

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serted: "The policy or wisdom of the maintenance of a dual system is beyond the powers of courts to even consider."

But Atty. Gen. McCranery, in a brief filed as a friend of the court, urged that segregation be struck down in all public schools. He declared:

"The subordinate position occupied by Negroes in this country as a result of governmental discriminations ('second-class citizenship,' as it is sometimes called) presents an unsolved problem for American democracy, an inescapable challenge to the sincerity of our espousal of the Democratic faith."

Lower courts have upheld segregation in public schools but have required that equal facilities be provided.

IN DELAWARE, the state's Supreme Court ordered Negro children admitted immediately to two white schools. It said they could not be made to wait a year until the state provided them with school facilities equal to those available for white children. It told school boards to ask for modification of its order after inequalities have been removed.

In Kansas, a special Federal Court refused to end segregation in elementary public schools in Topeka. It found there was equality of physical facilities in the schools and cited the Supreme Court's 1896 doctrine.

But it then made this comment:

"Segregation of white and colored children in public schools has a detrimental effect upon the colored children. The impact is greater when it has the sanction of the law; for the policy of separating the races is usually interpreted as denoting the inferiority of the Negro group."

IN THE SOUTH CAROLINA case, the special court in Charleston found that school officials were doing everything possible to equalize school facilities. It said that "no good could be accomplished for anyone" by ordering immediate abolition of segregation.

In the Virginia case a special three-judge Federal Court in Richmond upheld segregation and said it rests "neither upon prejudice, nor caprice, nor upon any other measureless foundation."

"Rather," the Richmond court added, "the proof is that it declares one of the ways of life in Virginia."

After hearing all the arguments, the Supreme Court will take the issue to its closed conference room for discussion and eventual decision. Court attaches do not look for announcement of the decision for several months, at least.

Supreme Court Asked to End School Segregation in Nation

By LUTHER A. HUSTON
Special to THE NEW YORK TIMES.

WASHINGTON, Dec. 9—Arguments began in the Supreme Court today on the question whether segregation of white and Negro students in separate schools violated the Federal Constitution.

The arguments will continue through Thursday but officials familiar with court procedure believed that it might be months before the nine justices rendered an opinion. Questions from the bench today indicated that the members of the court were gravely aware of the political, economic and social implications of the decision they were called on to make.

When a participating lawyer remarked that "tough problems" were involved Justice Felix Frankfurter said, "That is why we are here."

The proceedings are concerned with an attack, spearheaded by the National Association for the Advancement of Colored People, on the school segregation laws of four states and the District of Columbia. Thirteen other states in which segregation is practiced will be affected by the high court's ruling.

The basic issue before the court is the enduring one of states rights. The opponents of the segregation laws centered their case almost entirely on the argument that such statutes violated the section of the Fourteenth Amendment to the Constitution providing that no state "shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States."

The defense replied that no constitutional rights of Negro citizens were impaired by state segregation statutes.

The Supreme Court chamber was filled to its capacity of about 300 when the arguments began. It appeared that nearly half of those in the courtroom were negroes. In the corridor outside the courtroom doors about 450 persons waited in line. Negroes predominated in this group.

When the justices ascended the bench at 2:30 P. M. after the luncheon recess, the line had melted away and not all of the seats in the chamber were occupied.

The members of the court listened closely to the arguments, and on at least one occasion each of the justices intervened with questions. Chief Justice Fred M. Vinson, Justice Frankfurter, and Justice Stanley F. Reed asked the most questions.

Five cases are involved in the proceedings. One originated in the rural county of Clarendon in South Carolina; one in Prince Edward County, Virginia; a third in Topeka, Kan., and the two others in Delaware and the District of Columbia.

Other arguments in the Topeka case were ended, the South Carolina case was taken up. John W. Davis, noted constitutional lawyer and Democratic nominee for President in 1924, will resume his argument for the State of South Carolina when the court reconvenes at noon tomorrow.

Except in Delaware, where that state's Supreme Court ordered the immediate admission of Negroes to the public schools, the Negroes have been defeated in the lower courts and are the appellants before teh supreme tribunal.

Interest was high, as the arguments got under way, in the South Carolina case. Segregation is mandatory in that state under its Constitution, and Gov. James F. Byrnes, a former member of the United States Supreme Court, has suggested that if the high court now holds segregation to be violative of the Federal Constitution, South Carolina should abolish its public school system.

The provision of the South Carolina Constitution that is under attack states:

"Separate schools shall be provided for children of the white and colored races, and no child of either race shall ever be permitted to attend a school provided for children of the other race."

Slavery Held Perpetuated

Thurgood Marshall, special counsel for the National Association for the Advancement of Colored People, who opened the argument in the South Carolina case, asserted that "slavery is perpetuated in these statutes."

The original suit in South Carolina was filed on behalf of sixty-seven Negro children and their parents. They asked an injunction enjoining school officials in Clarendon County from "making a distinction on account of race and color in maintaining public schools for Negro children which are inferior to those maintained for white children." The suit was filed in May, 1950.

In June, 1951, a three-judge Federal court handed down a two-to-one decision upholding segregation but ordering the school board to furnish Negroes with "educational facilities, equipment, curricula and opportunities equal to those furnished white pupils."

South Carolina had levied a 3 per cent sales tax and floated a $75,000,000 bond issue to provide equal school facilities for white and Negro students, and a program designed to end admitted inequalities in facilities was under way.

Mr. Marshall argued today, however, that the attack on the decision was not made on equality of facilities but on constitutional grounds. He asserted that the mandatory segregation provision of the South Carolina Constitution denied to Negroes the equal protection guaranteed under the Fourteenth Amendment.

"We are asking only that state-imposed segregation be taken off," he told the high court. The state, he said, had shown no basis for segregation other than that "it would be unwise."

The argument of South Carolina that segregation was a legislative matter with which the Federal courts were powerless to interfere was "directly contrary to opinions of this court," Mr. Marshall said.

School segregation is not "any more ingrained in the South than segregation in transportation," he added, "and the court upset that."

Inferiority Feeling Stressed

Mr. Marshall asserted that the impact of segregation on the minds of Negro children, making them feel that they were of an inferior race, was far more serious than physical facilities, teaching standards or curricula of the schools.

"The humiliation the children go through will affect their minds as long as they live," he said. "I believe that there is a body of law that holds that distinctions on the basis of race are odious and invidious."

Justice Robert H. Jackson questioned Mr. Marshall on the status of Indians in the South under segregation and how any ruling the Supreme Court might make would affect that race.

Mr. Marshall said that Indians in the Southern states were in a preferred position as compared with the Negroes. He added that "the trouble with the Indians is that they haven't had the judgment or the wherewithal to bring lawsuits."

Mr. Davis had spoken for only fifteen minutes when the court recessed until tomorrow and had given only broad outlines of his argument.

He asserted that the right of the states to classify children in the schools did not "offend the Fourteenth Amendment." He said that to strike down segregation because of race would prevent states in the future from segregating pupils on other bases, such as sex, age and mental capacity.

South Carolina's program of improving school facilities for Negro students, Mr. Davis argued, made moot the question of whether white white schools should be thrown open to Negroes.

"It is entirely a legislative policy and does not depend on Constitutional rights," he said.

Segregation in Kansas is maintained under a state statute that permits school boards in first-class cities—those having more than 15,000 population—to set up separate schools for white and Negro pupils in the elementary grades. Segregation also is allowed in the high schools of Kansas City, Kan. Otherwise there is no segregation in high schools, and it is not mandatory in the elementary schools.

Negro pupils in Topeka, where segregation prevailed in the grade schools, joined in a suit asking invalidation of the segregation statute. A three-judge Federal District Court upheld the legality of segregation, though it acknowledged in its opinion that "segregation of white and colored children in the public schools has a detrimental effect upon colored children."

Robert Carter, a Negro lawyer of New York, argued that no state had any authority to deprive students of education because of race, and that the type of segregation prevailing in Kansas made it impossible for Negro children to receive adequate education.

"We abandon any claim of constitutional inequality except what comes from segregation itself, which denies Negro children equal protection of the law," he asserted. "The only concern of the Constitution is educational equality, independent of physical facilities."

Mr. Carter agreed with Paul E. Wilson, Assistant Attorney General of Kansas, that educational facilities in that state were equal for each race.

Justice Frankfurter questioned Mr. Carter on whether the Supreme Court was being asked now to overturn the doctrine it laid down in 1896 that segregation was constitutional if equal facilities were provided for both races. The justice noted that the pending cases dealt with legislation that had a long history in many states, including Southern, Border and some Northern States.

Mr. Carter replied that the Supreme Court had repeatedly held that the objective of the Fourteenth Amendment was to preserve equality of civil rights, and that the 1896 decision should be set aside.

Mr. Wilson said that Kansas had never doubted the constitutionality of its statute, and that he did not believe that it violated the Fourteenth Amendment. The detrimental effect of segregation on Negro children was "inconsequential and not governing in this case," Mr. Wilson asserted.

Asked by Justice Frankfurter what would be the practical difficulties in Kansas of carrying out an order to abolish segregation, Mr. Wilson replied that "in candor I must say that they probably would be small." The Negro population in Kansas, he added, amounted to only about 4 per cent of the state's total.

Statistics made available here today, based on 1949-1950 enrollment, showed that in the District of Columbia and the seventeen states that would be affected by a court ruling abolishing segregation, there were 9,821,000 white pupils and 2,397,00 Negroes in the public schools.

Associated Press Wirephoto

COUNSEL IN BIAS CASE: Opposing attorneys as they appeared yesterday in Supreme Court Building. John W. Davis, left, Democratic candidate for President in 1924, is representing South Carolina, and Thurgood Marshall is counsel to groups that are trying to outlaw segregation in the public schools.

LAW SCHOOL DEAN VIEWS THE COURT

Kilbride Sees Segregation Victory

By JIM PINSON

The Supreme Court's "new conservative complexion" may mean a victory for the Southern viewpoint in the historic public schools segregation case now before the high tribunal, an Atlanta law school official declared Thursday.

Dean Joseph B. Kilbride of Woodrow Wilson College of Law, an authority on constitutional law, said South Carolina and other states involved "stand a much better chance now than before the court of five years ago."

"Several of the idealistic members have been replaced by jurists who are more realistic in their approach. I mean," he explained, "that the present court will tend to say what the law is rather than what it ought to be."

CHANGE IN COMPLEXION

He cited as recent examples of the change in the court's "complexion" the decision in the steel seizure case, which he said legal authorities interpreted as a swing to the right. He said the current far-reaching question offers a sharp division for a realistic vs. idealistic tug-of-war between the justices.

However, Dean Kilbride pointed out that postwar decisions of the high court in segregation cases indicate that the long-standing "separate but equal facilities" doctrine rests on a shaky foundation.

In a Texas case, decided in 1950, the Supreme Court ordered a Negro admitted to a white law school on the grounds that he could not receive adequate legal training in Negro law institutions of that state.

CITES OKLAHOMA CASE

The same year, according to Dean Kilbride, the court ruled that a Negro attending University of Oklahoma law school was denied his constitutional rights when he was forced to sit apart from white students in the classroom and barred from eating in the university's dining halls.

Both decisions were by a 9 to 0 vote of the court.

"This, however," Dean Kilbride pointed out, "is a question involving public schools rather than law colleges, and the realistic or practical consideration is greater and may be an important factor in influencing the opinion of the justices in the current case."

Thomas L. Stokes

Supreme Court Faces Grave Issue

WASHINGTON—The 14th Amendment, now at issue in the segregation cases before the Supreme Court, is perhaps the most-tortured section of our Constitution, both legally and in practice. Figuratively, there is blood in it—the blood of Negro slaves; the blood of hundreds of thousands of white men, North and South, who fought a war over human slavery and, during one long period of our history, the blood also of white slaves in our early mills and factories who were exploited through interpretations of it. One of the 14th Amendment's five paragraphs still is in eclipse and shadowy as to interpretation. It, the first, reads in part: "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

On this seemingly plain and simple statement, opponents of segregation in our public schools base their case that Negro children should be admitted to public schools with white children. That now is forbidden, either in a blanket ban or with qualifications, in 17 states and the District of Columbia, our national capital. The present cases, brought on behalf of four states and the national capital, constitute an attack on segregation in public schools wherever it exists.

The Supreme Court has before it a decision by an earlier court—back in 1896—in a case involving segregation in public transportation. That lays down the principle that the "equal protection" guaranteed by the 14th Amendment may be effected by "separate but equal" facilities. So far as public schools go, those who uphold existing segregation contend that "separate but equal" schools meet the constitutional test.

For many years, during the latter half of the 19th century and well into this, the provision in that first section of the 14th Amendment about depriving a citizen of property without due process was strained and tortured by the Supreme Court in favor of corporations. "Property" was given a broad meaning that included workers and permitted various forms of exploitation, even including child labor. That is hard to imagine now. That attitude has disappeared. Human rights are being recognized.

Such exploitation of workers existed in the North, and primarily there early in the machine age, but later in the South, too. So we, as representing our forebears, are all guilty on that count, as on the bigger and broader count now before the Supreme Court.

We are, surely, all guilty, and the great problem rests on our souls as it does on those of the nine men on the Supreme Court. We can only pray that whatever their wisdom brings forth—and their decision will be pondered long and carefully—we shall, in a tolerant spirit, white and black, try to follow as best we can.

It is truly one of the great decisions of our history.

14th Amendment—

No segregation bar intended, court told

BY KARL R. BAUMAN

WASHINGTON, Dec. 10 — (AP) — John W. Davis argued before the Supreme Court today that framers of the 14th Amendment never intended it as a bar to separate schools for white and Negro students.

The veteran New York attorney told the court it was inconceivable that the Congress which submitted the amendment to the states for ratification intended to make segregated schools unlawful. The amendment, made a part of the Constitution in 1868, says no state shall deny any citizen the equal protection of the laws.

Davis pointed out that Congress persisted in providing separate schools in the District of Columbia, over which it has a direct jurisdiction.

HE SAID the legislative interpretation of the meaning and the scope of the amendment was such that no court is justified in ignoring it.

Davis specifically is asking the Supreme Court to uphold the South Carolina Constitution and its laws, which require separate schools for white and Negro students. The current arguments are on cases challenging segregated education as practiced principally in the South.

Davis told the court that School District No. 1 in Clarendon County, where the South Carolina controversy arose, has 2799 registered Negro students and 295 registered white students—a ratio of about 10 to 1.

He said that the mixing of the students would result in a situation "that one cannot contemplate with entire equanimity."

Davis told the court that the Clarendon County School District "proceeded promptly and in good faith" to comply with a Federal Court decision ordering equal educational opportunties for white and Negro students—but not making segregation unlawful."

Davis recalled that Sen. Charles Sumner, a tower in the Senate in the postwar Between the States days, tried repeatedly to bring about an end to school segregation in the District of Columbia but, "again and again he was defeated" in Congress.

Justice Burton asked Davis whether changed conditions in relations between the races might have a bearing on the doctrine of "separate but equal" school facilities.

* * *

DAVIS SAID changed conditions cannot broaden the terminology of the Constitution.

Furthermore, he told the court, any changes in conditions were an administrative or political question, not a judicial one.

Burton called the Constitution "a living document" to be interpreted in the light of conditions prevailing at the time.

Davis argued, however, that changed conditions "do not alter, change or expand" the intent of the framers of the 14th Amendment.

The arguments, which began yesterday, will be concluded tomorrow. But the court's momentous decision may not be forthcoming for several weeks or longer.

Racial segregation is challenged in cases arising in four states — Kansas, South Carolina, Virginia and Delaware—and the District of Columbia.

Supreme Court Hears Clashing Arguments: Is Segregation Legal In Public Schools?

WASHINGTON, Dec. 9 (AP)—The Supreme Court heard clashing arguments today on a major issue: Is it legal to have separate schools for Negroes and whites?

Negro lawyers pleaded with the tribunal to strike down such segregation as unconstitutional. Opposing attorneys contended that separation of the races is legal so long as educational opportunities are equal.

The Supreme Court, in effect, was being urged to meet the issue head-on; to uphold or throw out a doctrine it laid down in a decision in 1896. It held then that separate facilities for the races are constitutional if they are equal.

Teeing off on arguments that will run on for three days, Robert Carter of New York, a Negro attorney, contended that "no state has any authority" to divide its citizens by race.

Violation Claimed Regardless

Regardless of whether Negro schools are just as good as white, he said, the very fact of segregation deprives Negroes of equal opportunities for education and development. That, he said, violates the 14th Amendment to the Constitution and its guarantee of equality of treatment for all people.

But Paul E. Wilson, assistant attorney general of Kansas, and Justice Frankfurter from the bench, pointed out there is a long history of court decisions and legislative action built on the doctrine that separate facilities for the races are constitutional if they are equal.

In Kansas, Wilson said, the schools are equal, in buildings, teachers and courses. With that, Carter agreed. But he declared:

"Here we abandon any claim of constitutional inequality that comes from anything but segregation itself. We say that on the basis of separation, Negroes do not have equal protection before the law and equality of opportunity."

Five Cases Lumped

Lumped together before the court were five cases, from Kansas, South Carolina, Virginia, Delaware and the District of Columbia—all challenging separate public schools for white and Negro children as unlawful under the constitution.

Arguments were completed today in the Kansas case, with Carter and Wilson the opposing lawyers. A start was made on the South Carolina case, with Marshall and John W. Davis of New York—the Democratic presidential nominee in 1924—as the rival attorneys.

The Supreme Court won't get around to a decision in the cases until sometime next year. When it does, the ruling will touch 13 other states which have complete or partial segregation in their schools.

For the South, with its traditions of racial segregation, the decision may rank as one of the most important handed down in years.

The Kansas case centers on segregation in the Topeka school system. Negro parents and children appealed to the Supreme Court to reverse a ruling by a special three-judge U. S. District Court upholding a state law that permits cities over 15,000 to set up separate elementary schools for Negro and white pupils.

South Carolina Different

The South Carolina case is somewhat different: Another special three-judge Federal Court, in Charleston, had held that segregation was permissible in public schools if equal facilities were provided.

It directed school authorities to provide equal facilities and report back what they were doing about them. Negro parents of Clarendon County appealed this ruling to the Supreme Court, which sent it back last January with instructions to the special court to study the reports on any progress made toward equalizing schools.

In a new ruling last March, the special court said school officials were complying with the decree to equalize facilities and reaffirmed its earlier position that segregation in public schools is constitutional. This latest ruling now is before the Supreme Court on appeal.

The Topeka special court found there was no substantial difference in Negro and white school facilities, qualifications of teachers, and quality of instruction. But it said, too, that "segregation of white and colored children in public schools has a detrimental effect upon the colored children," with a tendency to retard education and mental development and deprive them of "some of the benefits they would receive in a racially integrated school system."

Supreme Court Begins Hearing On Segregation

Cases Involve D. C., Virginia, Kansas And 2 Other States

By Robert K. Walsh

A permissive and limited separation of white and Negro pupils comes up first for argument today as the Supreme Court begins historic hearings on Constitutional issues of racial segregation in public schools.

Those special features are in a case testing validity of a 1949 Kansas law. The State statute allows cities of more than 15,000 population to operate seperate but equal grade schools for the two races.

Four other cases, one challenging validity of the District's segregated public school system will be heard today, tomorrow and Thursday. District case arguments start tomorrow. South Carolina, Virginia and Delaware cases also will be heard.

Kansas Officials Send Brief.

On the eve of the segregation arguments, Kansas State officials sent notice they would actively defend their law. The Supreme Court two weeks ago asked Kansas whether a brief would be forthcoming and, if not, whether the State conceded that its segregation law was wrong.

The brief, submitted yesterday, defended the law as being in line with the equal protection clause of the 14th Amendment to the Federal Constitution. It noted that a three-judge Federal Court decided in August, 1951, there was no inequality of facilities or teaching.

The Kansas officials contended that the appeal, brought in behalf of several Negro children who were refused admission to white schools in Topeka, where segregation is maintained only through the sixth grade, did not show that the plaintiffs suffered "actually or personally" because of the segregation.

Indicating that they will narrow their case to a greater extent than will officials from Virginia, South Carolina, Delaware and the District, the Kansas authorities stated:

"We do not propose to advocate the policy of segregation of any racial group within the school system. We contend only that policy determinations are matters within the exclusive province of the Legislature.

"We do not express an opinion as to whether the practice of having separate schools of equal facility for white and colored races is economically expedient or sociologically desirable, or whether it is consistent with sound ethical and religious theory. We do not understand that these extra-legal questions are now before the court.

"The only proposition we desire to urge is that the Kansas statute which permits racial segregation in elementary public schools in certain cities of the State does not violate the 14th Amendment to the United States Constitution, as that amendment has been interpreted and applied by the Supreme Court."

Argument of Opposition.

After Assistant Attorney General Paul E. Wilson of Kansas completes his defense of the law, it will be attacked by Robert L. Carter of New York City, attorney representing the Negroes who appealed to the Supreme Court.

Mr. Carter indicated he will center his legal fight on a contention that racial segregation as such—irrespective whether facilities are otherwise equal—violates Constitutional rights.

The brief opposing the Topeka system and the Kansas law notes that the three-judge court, in upholding the separate-but-equal procedure in that city, nevertheless commented that segregation was detrimental to colored children.

Following two hours of argument on the Kansas case, an equal amount of time will be available late today for argument on the South Carolina controversy. The latter case originated in the unsuccessful attempt of several Negro children to gain admittance to white schools in Clarendon County.

The United States Court of Appeals in Charleston last year ordered the State to equalize facilities in that area. But it held that segregation of white and Negro students in the State's public schools is legal because the 14th Amendment was not intended to limit a State's power to provide separate schools for both races.

John W. Davis, a leading Constitutional lawyer, who was Democratic president nominee in 1924, will argue for South Carolina. The State's brief indicated he will contend mainly that the separate States have a Constitutional right to set up separate schools, if they wish. Arguments against the South Carolina stand will be offered by Thurgood Marshall, New York attorney representing the National Association for the Advancement of Colored People.

Supreme Court Ends Hearing On Segregation

Negro Attorney Claims Separate Schools Are Brand Of Inequality

WASHINGTON, Dec. 11 (AP) — A fervent plea to erase racial segregation in public school on grounds it "brands Negro citizens with inequality" brought to an end today three days of momentous arguments before the Supreme Court.

Now it is up to the high tribunal to decide, probably after weeks of pondering, whether separate schools for white and Negro children violate constitutional guarantees of equal treatment for all persons. School systems in 21 states and the District of Columbia are involved.

The arguments themselves wound up with dramatic, conflicting bids to the highest tribunal both to uphold, and to rule out segregation in the national capital and in the state of Delaware.

James M. Nabrit Jr., a Negro attorney educated in Washington's public, segregated schools, told the court:

Attacks District School

"When liberty is interfered with by the state, it has to be justified . . . We submit that in the capital of the nation, in the capital of the free world, there is no place for a segregated school system.

"The Constitution does not permit it and the statutes do not authorize it."

But Milton D. Korman, assistant corporation counsel for the District of Columbia, said it isn't a constitutional argument to say that "Washington is the window through which the world looks at us."

Korman said it should be left to Congress, which passes the laws for Washington, to determine whether there should be separate schools here as there have been for nearly a century.

From Louis L. Redding, Wilmington, Del., Negro attorney, came a plea for the Supreme Court to declare that:

"Segregation of itself inflicts inequality of educational opportunity, so that no matter what steps are taken . . . to eliminate inequality of facilities, there still will be inequality of opportunity."

H. Albert Young, attorney general of Delaware, trained his legal guns on a Delaware Supreme Court decision ordering Negroes admitted immediately to two public schools for white children. He said the court acted on the ground that the Negro school facilities were not eual, but he objected that the court did not give authorities a reasonable time to eualize the facilities.

Arguments in the District of Columbia and Delaware cases were the last in a series of five to unfold before the court. esterday and the day before, the tribunal heard arguments in school segregation cases from Kansas, South Carolina and Virginia.

The principal issue facing the court is to determine whether to reaffirm or toss overboard a Supreme Court decision of 1896 holding that segregation is constitutional if both races are provided with equal facilities. This decision established what has become known as the "separate but eual doctrine."

Doctrine Challenged

Negroes are challenging this doctrine, under the leadership of the National Association for the Advancement of Colored People.

They have told the Supreme Court over and over for three days that it makes no difference whether a state provides Negroes with as good schools as those for Whites—that segregation in itself is harmful and degrading and denies equal protection to all persons.

The future of public school systems as they now are constituted in parts of the South may hinge on whether the Supreme Court accepts this point of view or stands by the separate but equal doctrine.

The Georgia Legislature has voted to deny state funds to any mixed schools and to withhold money from all schools if any part of its segregation law is ruled void.

South Carolina overwhemingly approved on Nov. 4 an amendment to the state constitution to repeal a requirement for free public schools. The amendment will become effective if the state's General Assembly ratifies it.

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Warnings Of Disrupted South Made In Segregation Debate

Denials Made With Equal Zeal In Argumen Before Supreme Court On Educational Syste

By DOUGLAS B. CORNELL

WASHINGTON, Dec. 10 (AP)—The Supreme Court heard war ings—and denials—today that abolition of race segregation in t public schools would deal a heavy blow to the educational syste in the South.

The high tribunal is grappling with the question whether the C stitution forbids states to put Negro and white children in sep arate schools.

Virginia's attorney general, J. Lindsay Almond, contended in vigorous tones that a ruling against segregation would de stroy the public school system in Virginia "as we know it today."

W. D ... statement to emphasize solemnly that abolition of segregation in South Carolina schools is some thing that we cannot contemplate with entire equanimity."

Arguing on the other side of the question, Thurgood Marshall, a White, hired... 70We... old John

District of Columbia case today. The Delaware case will provide a finale tomorrow, and the court probably will give its decision some time in the spring.

1896 Decision At Issue

The main issue before the tribunal is whether it will stand by or upset an 1896 decision holding that segregation is permissible if equal facilities are provided for the races. This decision held that segregation in such instances did not conflict with guarantees of the 14th Amendment to the Constitution that everyone shall have equal protection of the laws.

Davis, the 1924 Democratic presidential nominee, and T. Justin Moore of Richmond, arguing in the South Carolina and Virginia cases, said there is no reason now to overturn the 1896 "separate but equal" doctrine. Marshall and Spottswood Robinson III of Richmond, another Negro lawyer, took exactly the opposite stand.

Two Negro lawyers from Washington, George E. C. Hayes and James M. Nebrid Jr., argued that school segregation in the national capital should be wiped out because it violates another provision of the Constitution — the Fifth Amendment which says people must not be deprived of their rights without due process of law.

School authorities here base segregation on laws passed by Congress before the turn of the century. Hayes said they were wrong in doing so, that these laws do not give them power to require segregation. Separate schools in the capital, he said, are maintained without sanction of the Constitution.

Chief Justice Vinson asked whether Congress makes money available separately for white and Negro schools in appropriating funds for the District of Columbia. Hayes said it does.

But he struck at this argument that separate schools violate the Fifth Amendment to the Constitution as well as civil rights laws and the United Nations charter to which the United States government adheres.

Davis also stressed the attitude of Congress. He said it approved the 14th Amendment in 1866 and at the same time passed legislation providing for separate schools in Washington. From that time on, he said, "Congress has never wavered in that policy."

"Equal protection, in the minds of the Congress of the United States," Davis reasoned, "does not contemplate mixed schools as a necessity."

Of the 33 states which ratified the 14th Amendment, Davis said, 23 already had or immediately installed separate schools for white and colored children.

"Were they violating the amendment they had solemnly accepted?" he asked.

Fine Points Drawn

The Negro lawyers, representing Negro parents and the National Association for the Advancement of Colored People, are taking the position that regardless of whether states give Negroes as good schools as whites, segregation is harmful to their race.

Marshall said there was a large volume of testimony to that effect in the South Carolina case. Davis contested this. He said some of the evidence was based on tests showing that a majority of colored children in the South preferred white dolls and that young children in Philadelphia were aware of racial differences.

"This is the kind of testimony that the appellants are relying on to turn back the enormous volume of precedent," Davis said. "Much that is bandied around in the name of the social scientist is an effort to rationalize his own preconceptions."

That sent smiles flitting across judicial faces.

In rebuttal, Marshall said he didn't know of a single authority who took the stand that segregation isn't harmful to Negro children. He said if there is any such evidence it should have been presented in lower courts, with a chance for cross-examination, instead of being cited in the Supreme Court from books.

This prompted Justice Frankfurter to remark that "I didn't know we couldn't read books."

"I want to know from you," Frankfurter asked Marshall, "whether I'm entitled in reaching my opinions to take into account accredited writings."

"Yes, sir," Marshall agreed.

Supreme Court Hears School Segregation Plea

Kansas Argues That Students Are Getting Equal Treatment

WASHINGTON, Dec. 8—(AP)—Attorneys for the state of Kansas, acting on the eve of an historic Supreme Court test, today defended a Kansas law permitting segregation of white and Negro children in some grade schools.

Tomorrow the high court will be asked to rule on the bitterly controversial question of whether there should be an end to separate schools for white and Negro children in this country.

Five separate cases of school segregation — in South Carolina, Virginia, Delaware, Kansas and the District of Columbia—will be laid before the court, with the outcome gravely awaited in the South.

LEADING LAWYERS

The high tribunal will hand down its decision sometime next year after hearing some of the nation's leading constitutional lawyers argue on both sides of the question.

However, the court could avoid giving a flat, final opinion embracing the broad subject of segregation, as it has in the past.

Today's action by Kansas attorneys came in response to a prod by the Supreme Court, which directed the state last Nov. 24 either to file a brief giving its position on segregation or to state whether it conceded that segregation is wrong.

Atty. Gen. Harold R. Fatzer of Kansas, his assistant, Paul E. Wilson, and Peter F. Caldwell, counsel for the Topeka board of education, responded with a brief arguing that Kansas law does not violate the U. S. Constitution.

The brief noted that a special three-judge federal court has upheld Kansas' segregation law in rejecting demands by a group of Negro parents that their children should be admitted to white schools in Topeka.

The brief declared that the special court did not "specifically show" that any of the Negro students have suffered because of segregation, "nor that the mental development of any of the appellants (students) in this case has been retarded."

14TH AMENDMENT

The heart of the impending battle before the Supreme Court hinges on the 14th Amendment to the Constitution, whoch bars abridgment of citizenship rights.

The high court handed down a far-reaching decision on the subject in 1896 when protests arose over the action of a Louisiana railroad in compelling Negroes to ride in separate "Jim Crow" sections on its trains.

The court at that time ruled that separate treatment for Negroes was not unconstitutional as long as they received equal treatment. The decision became known as the "separate but equal" doctrine and permitted states to pass segregation laws.

No court in the 56 years since then has overturned the principle of the court's decision, although in recent years the tribunal has outlawed segregation on interstate busses and trains on the ground that the Negro passengers were not getting equal treatment.

TEXAS, OKLAHOMA

The court also ruled in 1950 that Texas and Oklahoma must let Negroes enter their graduate schools, but only on the ground that the Negro graduate schools were not equal to those for whites. The court did not say that putting the Negroes into separate schools was unconstitutional.

John W. Davis, Democratic presidential candidate in 1924, will argue the South Carolina case before the Supreme Court.

South Carolina's Gov. James E. Byrnes, a former Supreme Court justice, has already served notice that the public school system in his state will be abolished if the court bars school for whites and Negroes.

On the other side, Thurgood Marshall, special counsel for the National Association for the Advancement of Colored People, argues against segregation.

12d 1952

Racial Segregation in Public Schools

SEGREGATION HELD LEGISLATIVE ISSUE

Davis Tells High Court Race Separation in Schools Is Not a Question of Basic Rights

By LUTHER A. HUSTON

Special to THE NEW YORK TIMES.

WASHINGTON, Dec. 10—The segregation of pupils in the public schools on the basis of color is not a question of constitutional rights but of legislative policy, John W. Davis told the Supreme Court today. For that reason, he asserted, the court should not set aside as unconstitutional the segregation statutes enacted by the states.

Mr. Davis, a veteran constitutional lawyer who was the Democratic Presidential nominee in 1924, was arguing for the State of South Carolina in the attack being made in the Supreme Court against its segregation laws. The laws of Kansas, Virginia, Delaware and the District of Columbia also are involved in arguments. They began yesterday and will end tomorrow.

Opposing Mr. Davis in the South Carolina case, Thurgood Marshall, Negro lawyer speaking for the National Association for the Advancement of Colored People, declared that the constitutional rights of Negroes could not be weighed against the policies of South Carolina or other states.

Segregation Called Illegal

Segregation is unconstitutional under the Fourteenth Amendment, which forbids any abridgement by the states of the rights of United States citizens, Mr. Marshall said. That was the basis on which he asked that a provision in the South Carolina Constitution establishing segregation in the schools be set aside by the Supreme Court.

Mr. Davis had admonished that removal of the barrier between white and Negro pupils in the public schools would create a situation "one cannot contemplate with any equanimity." Mr. Marshall said, however, that the people of the South "are not lawless" and would abide by whatever ruling the high court might hand down.

Arguments in the Kansas case were heard yesterday. The South Carolina and Virginia cases were completed today, and the District of Columbia case was begun. It will be completed tomorrow, followed by the Delaware case. The court will ten take the issues under advisement, with no indication that an early ruling is in prospect.

The courtroom was filled to capacity when the second day of arguments began, and again several hundred persons were lined up in the corridor hoping to get in. This line, however, was smaller than the one yesterday.

Mrs. Helen W. Hobart, Dean of Women and Associate Professor of Psychology at Roanoke College, Va., was waiting when the doors of the Supreme Court Building were opened this morning. She had arrived at 5:30 A. M. She said that she had waited in line all day yesterday and did not get into the courtroom. Today she was determined to be first in line and was.

The issues became more complicated as the arguments continued, and questions asked by the justices from the bench appeared to reflect perplexity over some of the problems involved.

The Supreme Court, in a ruling in 1896, laid down the doctrine, which still stands, that segregation in the schools did not violate the Constitution provided that equal facilities were set up for pupils of each race. The questions that some justices must be convinced that there was a compelling reason for overthrowing this doctrine.

On the other hand, questions asked by Justice Harold H. Burton and other members of the court raised the point of whether changed conditions might not warrent some revision of the "equal facilities" doctrine.

Charter of U. N. Cited

Justice Robert H. Jackson posed a new question when he asked lawyers arguing the Virginia case what would happen if Congress passed a law holding that segregation was contrary to public policy. This seemed to have been inspired by the argument of Mr. Davis that it was a question of legislative policy, rather than constitutional rights.

Spottswood Robinson, 3d, Negro lawyer of Richmond, replied that he did not believe Congress could adopt legislation, under the fourteenth Amendment, that would remedy the situation. T. Justin Moore, representing the State of Virginia, said that it was "a big question;" but expressed belief that a new amendment to the Federal Constitution would be required.

An international twist also was given to the issues when the Negro lawyers in the District of Columbia case charged that the district's segregation laws violated the Charter of the United Nations as well as the United States Constitution.

Section C, Article 55, of the Charter pledges all members to promote "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion."

Segregation is mandatory under the South Carolina Constitution, and the pending case arose when an injunction was sought to compel admission of Negro children to schools provided for white pupils in Clarendon County, a rural area. Mr. Davis noted that there were 2,799 Negro school children and only 295 white pupils in the South Carolina school district involved in the controversy.

He argued that the policy of school segregation was set up under the Fourteenth Amendment, rather than in violation of it. Congress, he said, had never altered the policy, citing segregation in the District of Columbia, which is under Federal jurisdiction, as evidence that Congress considered segregation a scoming within the scope of the amendment.

He also cited what he called a "vast body" of court rulings, wise legislation and learned persons that had supported the constitutionality of school segregation over a period of ninety years.

Called a Local Issue

"What is the great national policy underlying this whole question?" Mr. Davis asked. "Is it not the fact that the very strength and fiber of our Federal system is local self-government in those matters for which local action is competent?

"Is it not a question which most nearly approaches the hearts and minds of the people—the question of educating their young?

"Is it not the height of wisdom that the manner in which this education is conducted be left to those most immediately affected and the wishes of the parents—both white and colored—be ascertained before forcing children into contacts that may be unwelcome?"

Tension can arise in mixed schools as easily as in segregated schools, Mr. Davis asserted.

Mr. Marshall rejected the thought that trouble might follow removal of segregation barriers. He said that in the South "white and colored kids walk down the road together on their way to school, separate and go to separate schools, and then play together."

The Virginia case involves high school facilities in Prince Edward County. Mr. Moore told the court that the population of the county —about 15,000—was 52 per cent Negro and 48 per cent white. The white high school has 400 pupils and the Negro school 460.

Negroes complained that the facilities provided for pupils of their race were inadequate. A three-judge Federal court agreed that the Negro high school was inferior and ordered that facilities be equalized. The court upheld the constitutionality of segregation itself.

Mr. Robinson argued that the lack of equal facilities was Constitutional discrimination and was in itself ground for appealing to the Supreme Court.

J. Lindsay Almond, Attorney General of Virginia, and Mr. Moore outlined to the court an extensive program Virginia had undertaken to create equal facilities for white and Negro students. Mr. Almond said that a ruling by the court against segregation would "destroy the public school system in Virginia as we know it today."

Chief Justice Fred M. Vinson asked why it would destroy the system and Mr. Almond said that it would dry up the sources of taxes and bond issues.

"The people would not vote bond issues," he asserted.

Mr. Robinson argued that the "stepped-up" program of Virginia to improve the Negro schools was inadequate and would not remedy the situation. The solution, he said, was to force the admittance of Negro pupils to white schools.

George E. C. Hayes, a Negro lawyer who formerly was a member of the District of Columbia School Board, argued that there was no statutory authority for segregation in the district, and that it was a matter of interpretation as to whether it was permissible under laws passed by Congress.

The District case originated in therefusal of school officials to admit Negro children to Sousa Junior High School. A suit was brought, but Federal District Judge Walter M. Bastion granted a motion to dismiss on the ground that the complaint failed to state a claim on which relief could be sought.

The appeal to the Supreme Court is not based on the Fourteenth Amendment, as in the cases of South Carolina, Virginia and Kansas, because that amendment applied to the states. The District of Columbia is under Federal jurisdiction.

Article 1 of the Constitution, which defines the powers of Congress, and the due process clause of the Fifth Amendment are invoked.

When Mr. Hayes argued that there was no statutory authority for segregation here, Justice Felix Frankfurter asked if district officials had not been "doing something lawless" for years. Mr. Hayes did not accept the word "lawless," but said that the officials had acted without authority.

The high court, he asserted, now had an opportunity to remedy the situation.

Deny McGranery Plea Against Jim Crow Schools

By VENICE T. SPRAGGS

WASHINGTON — In an unprecedented move, the Supreme Court last week refused Attorney General McGranery permission to argue personally in the school segregation cases which got under way here Tuesday.

The Justice department informally requested the court in mid-November to grant McGranery permission to participate in the oral argument testing the constitutionality of racial segregation in tax-supported elementary and high schools.

But the request was rejected, although it is customary for the Attorney General or the Solicitor General to intercede as a friend of the court in matters affecting the interest of the United States.

Before the high tribunal are cases involving segregated public schools in South Carolina, Virginia, Kansas, Delaware and the District of Columbia.

Argument by Thurgood Marshall, special counsel for the NAACP, that segregation in and of itself constitutes discrimination and accordingly is a violation of the equal protection clause of the Fourteenth Amendment is supported in a brief filed by the Attorney General last week and another "friend of the court" brief filed by four civil rights organizations and two church groups.

The Government's brief asked the high court to outlaw all racially segregated public schools, contending that "separate but equal" school systems are unconstitutional.

"The Government and people of the United States must prove by their actions that the ideals expressed in the Bill of Rights are living realities, not literary abstractions, the Attorney General argued in his brief.

"The subordinate position occupied by Negroes in this country as a result of governmental discrimination (second-class citizenship, as it is sometimes called) presents an unsolved problem for American democracy, an inescapable challenge to the sincerity of our espousel of the democratic faith," the cabinet officer declared.

"In these days when the free world must conserve and fortify the moral as well as the material sources of its strength, it is especially important to affirm that the Constitution of the United States places no limitation, expressed or implied, on the principle of the equality of all men before the law."

The brief prepared by the American Civil Liberties Union, the American Jewish Committee, the Anti-Defamation League of B'nai B'rith, the Japanese-American Citizens League, the American Ethical Union and the Unitarian Fellowship for Social Justices, asserted that segregation violates the equal protection provision of the Fourteenth Amendment because it is an "inadmissable classification" consistently rejected by the Supreme Court.

The District of Columbia Board of Education, on the other hand argued that the Constitution's Fifth Amendment does not bar a segregated school system.

"Separate schools for white and colored children were set up by the very same legislators who proposed the fourteenth amendment and who enacted the Civil Rights Acts, District Corporation Counsel Vernon West contended. "Thus, their contemporaneous judgment was that a dual system of schools is constitutional to make that decision."

Argument in the cases were to be concluded Thursday, but final decision of the issue will not come until next year.

Supreme Court Jim-Crow School Arguments Attract Crowds

Argued School Case— Top legal figures were opponents before the Supreme Court in hearings on the all-important argument as to whether enforced segregation in public schools should be abolished by law. Shaking hands during a break in the historic arguments are John Davis, defending the South Carolina law, and Thurgood Marshall, chief counsel for the NAACP in the South Carolina case. Attorneys looking on are Milton Korman assistant corporation counsel for the Board of Education for the District of Columbia, and James Nabrit and George Hayes, representing D. C. Negro public school students.—Porter Photo.

Waiting to Hear Arguments—A long line of interested citizens is shown awaiting admittance to the United States Supreme Court last week to hear the historic arguments on the vital matter of enforced segregation in public schools.

Long Wait Before High Court Rules On Bias in Schools

By STANLEY ROBERTS
(Courier Staff Correspondent)

WASHINGTON—Ten hours of legal arguments before the U. S. Supreme Court over constitutionality of segregated public schools in seventeen states and in the District of Columbia ended last Thursday.

The nine justices will now discuss presentation among themselves in private conferences and then try to find a majority of at least five of their number who will agree on a way to settle these momentous cases and then write one or more opinions.

NO RULING IN any of the segregation cases is expected until spring and it may be that the historical decision will not come down until June shortly before the court recesses for the year. It is even possible that the five cases now before the court may not be decided together.

On Tuesday and Wednesday the Kansas, South Carolina and Virginia cases were argued. On Thursday, the court heard the cases on Delaware and the District of Columbia.

In speculating on the possible decision one can only be limited by the legal imagination of the nine Supreme Court justices.

They could, as asked by the attorneys for the Negro children seeking admission to "white" schools, crack down the half-century-old doctrine that "separate, but equal schools" are constitutional. However, as Justice Hugo Black suggested, they could rule that segregation might square with equality in one state and not in another.

THE JUSTICES MIGHT rule flatly that segregation is permissible under the separte but equal dictrine.

They might rule, that, as the Southern States argued, that the issue is not one for the courts to decide, but for the State Legislature.

Or they might point out that the Constitution's Fourteenth Amendment allows Congress to act to end segregation in the state, and it has power to also act in the District of Columbia.

Hence, the net results of these Supreme Court decisions to Negroes could do anything from retention of the present school segregation situation to its complete abolition, although comment here in Washington seems to be that hardly complete abolition of jim-crow schools will be felt during one great decision. The Supreme Court justices seem to have made one thing clear at least: they are very concerned with the effect of any move on their part which would strike down all of the segregated school patterns.

* * *

AS JUSTICE Felix Frankfurter put it, there is the "whole broad problem of relief for the Negro children during this case; assuming that their rights are involved."

The first case heard was that of Kansas.

The main argument against segregation that is unconstitutional, regardless of whether school facilities are equal, was made in the Kansas case by Robert L. Carter, assistant to Thurgood Marshall, chief counsel of the NAACP.

In Kansas, a three-judge Federal court ruled that the facilities are equal as to buildings, teachers, courses of study and school buses.

Therefore, the Kansas court said under the separate-but-equal doctrine laid down by the Supreme Court in 1896, the Kansas segregation is constitutional.

The Kansas Court observed, however, that segregation itself imposed psychological barriers to the education of Negro pupils.

* * *

IT WAS THIS fact that Attorney Carter used as a basis for his argument that segregation itself denies to Negro children the educational opportunties they are entitled to under the Fourteenth Amendment to the Constitution.

His contention was opposed by Paul E. Wilson, Assistant Attorney General for Kansas. Wilson said that the Court's findings of psychological damage was merely another way of saying that "colored children would be better off in the integrated schools than they are in the segregated schools."

"It was," he said, "a finding of actual discrimination against Southern children."

Thurgood Marshall made a similar argument against segregation in the South Carolina case. Opposing him was John W. Davis, Democratic nominee for the Presidency, 1924.

Davis argued that if the Supreme Court outlawed segregation in South Carolina, he could not see how the state would legally separate children on any basis, including sex, age and mental capacity.

In the South Carolina case, a three-judge Federal Court in Charleston ruled that segregation was equal if equal facilities were provided. It ordered school authorities to provide equal facilities, and then the decision was appealed to the Supreme Court by parents of Negro children in Clarendon County and the Supreme Court sent it back to the special court for a study of progress reports.

* * *

IN A NEW ruling last March the special court decided school officials were fulfilling the order to equalize facilities. This is the ruling that was before the Supreme Court last week. In the South Carolina case, Thurgood Marshall was closely questioned by Justice Frankfurter, who sought to bring out the historical background for segregation and insisted that "the Fourteenth Amendment did not destroy history."

Frankfurter also sought to to pin down the scope of attack on segregation. He asked that "does it follow that because you can't make some classification of certain types of segregation you can't make any classification."

Virginia's Attorney General told the Supreme Court that a decision striking down segregation "would destroy that state's public school system as we know it today."

Chief Justice Fred M. Vinson asked the Attorney General "in what way?"

The Attorney General said: "The people simply would not vote bond issues for education."

* * *

THE ATTORNEY GENERAL said he did not make the statement as a threat. He added that it just simply would not be possible to raise taxes on either a state or local level to support the Virginia schools. The Virginia Attorney General stated flatly, that Negro teachers would not be employed to teach white pupils. He said that in Virginia there are more Negro teachers than there are in all of the thirty-one states with no segregation.

He argued that Virginia, in the past, has discharged its obligations to provide equal-but-separate facilities for Negro students.

In the District of Columbia case, Atty. George E. C. Hayes argued that it was agreed by the District and the Negro people in Washington that children had been refused admission "solely because of race and color." He said that there was no issue in this case because of equality of school facilities. His argument is whether the Board of Education has the constitutional power war powers.

On each day — Tuesday, Wednesday and Thursday—the courtroom was packed and hushed. Only fifty seats were available to the public. Lawyers, school officials and persons throughout the nation who had an interest in the case filled the rest of the courtroom.

or the District Negro
declared that the Thir-
endment which abol-
avery and the Four-
Amendment together re-
y power from the Fed-
ernment "to deal with
solely on the basis of
color except where the
ds an over-riding neces-
, as in carrying out its

er to deny admission of a Negro to a white school. He said there is no law requiring segregation, but that even if there were such an act of Congress "then we would take the position that it violates the Constitution."

In a reply to a question by Justice Black, Attorney Hayes said that segregation in Washing-

ton violates the Constitution's Fifth Amendment, due process clause, the Civil Rights, and the public policy of the United States as set forth in the United Nations Charter.

Hayes said that segregation in the District of Columbia is "neither permissive nor mandatory."

* * *

ATTY. JAMES M. NABRIT also

U. S. Supreme Court Dodges Constitutionality issue

On Racial Segregation

By Louis Lautier

WASHINGTON, D. C. — (NNPA) - - This being an election year - - the United States Supreme Court last Monday, for the second time during its present term, dodged the issue of the constitutionality of State laws requiring racial segregation in public education.

The case it refused to pass upon last Monday was the so-called Clarendon County (South Carolina) school segregation case, in which for the first time, presented the issue as to elementary and high schools, clearly drawn and with competent expert testimony appearing in the record.

In the Clarendon County school segregation case the high court again avoided passing on the constitutionality of the constitutional and statutory provisions of South Carolina requiring separate schools for colored and white children.

It did so by vacating the judgment of the Federal District Court at Charleston, South Carolina, and remanding the case for further proceedings.

The Federal District Court had ordered Clarendon County school officials to file with it within six months a report showing what they had done toward equalizing the schools in the county.

Before passing on the questions raised by the appeal from the District Court the Supreme Court said it would like to have the views of the lower court on that report, which has already been filed.

Justice Hugo Black and William O. Douglas dissented to vacation of the judgment on the grounds stated in the majority opinion. The per curiam (by the court) opinion stated that "They believe that the additional facts contained in the report to the District Court are wholly irrelevant to the constitutional questions presented by the appeal to this Court, and that we should note jurisdiction and set the case down for argument."

The action of the Supreme Court in postponing consideration of the Clarendon County case relieves the tension in southern legislations, which already are considering means of getting around a high court decision outlawing segregation in public elementary and secondary schools.

The Clarendon County school case was appealed directly from a special three-judge District Court convened at Charleston.

The suit was orginally brought by colored children of public school age residing in School District No. 22, Clarendon County, South Carolina, and their parents and guardians against county school officials and the school district.

The complaint charged that the Jim Crow schools were in all respects inferior to the schools for white children.

The plaintiffs contended that it was impossible for colored children to obtain a public school education equal to that afforded white as long as South Carolina's Consttiution and laws required segregation in public schools.

Twofold relief was sought: (1) A declaratory judgment declaring these laws invalid under the Fourteenth Amendment, and (2) an injunction to restrain the defendants from making and enforcing any distinctions, based on race or color, in the educational opportunities, facilities and advantages afforded public school children in the district.

The District Court, by a 2-to-1 decision, ruled that neither the constitutional nor statutory provisions requiring segregation in the public schools violated the Fourteenth Amendment and that the plaintiffs were not entitled to an injunction against the enforcemet of these provisions.

The judgment also stated that the educational facilities offered colored children were unequal to those afforded white pupils, and the court ordered the defendants "to furnish to plaintiffs and other Negro pupils of said district educational facilities, equipment, curricula and opportunities equal to those furnished white pupils."

The defendants were ordered to report to the District Court within six months what action they had taken to carry out the order.

From this judgment, the National Association for the Advancement of Colored People appealed to the Supreme Court.

Attorneys for the NAACP urged the high court to pass upon the question because of its importance. They pointed out that approximately 10,000,000 colored people live in the South, where a pattern of educational segregation is sanctioned and enforced.

The fact that the South is the poorest section of the country, they argued, is overwhelmingly due to the maintenance of segregation and a caste system "which relegates all Negroes to a position lower than the lowest white."

This area is less agle to afford either the financial or educational hazards created by a dual school system, they contended. As a result, they asserted, colored people have been victimized throughout the years by grossly discriminatory practices designed to conserve for whites the maximum possible benefit of educational resources.

Attorneys for school officials filed in the Supreme Court a motion to dismiss the appeal on the ground that it was premature and "improvidently" taken because the District Court had not finally determined the controversy and that the question sought to be presented in the appeal was not ripe for decision prior to a final determination by the District Court.

South Carolina Segregation Again Upheld

Clarendon County Case Decision Is Reaffirmed

CHARLESTON, S. C., March 13 —(UP)—A three-judge Federal court which 10 days ago reheard the Clarendon County segregation case in Columbia today reaffirmed its original decision that segregated school facilities are constitutional.

The unanimous opinion, written by Circuit Judge John J. Parker, of Charlotte, and concurred in by Circuit Judge Armistead M. Dobie, of Charlottesville, Va., and District Judge George Bell Timmerman, Sr., of Columbia, S. C., was filed in Federal District Court here.

[Last Friday a three-judge Federal court in Richmond handed down a similar decision upholding segregation in Virginia's public high schools. It ruled in the Prince Edward County suit, however, that facilities for Negro school children must be equalized. The court in effect said the State can separate white and Negro children in its high schools and "it is not for us to adjudge the policy as right or wrong . . ." Judges were Dobie and District Judges Sterling Hutcheson and Albert Bryan.]

Case Reheard

The three-judge court reheard the Clarendon case March 3, after Negro parents of Clarendon County, S. C., who brought the original case had appealed the first decision to the Federal Supreme Court.

The high court returned the case to South Carolina for consideration of "additional facts."

The Negro plaintiffs, backed by the NAACP, challenged the constitutionality of segregation on the public school level and asked that separation of the races in public schools be ruled out.

The case was first heard here last May and the court ruled 2-1 that segregation is not unconstitutional. But the court ordered Clarendon County to take immediate steps to bring about equality of its Negro school facilities.

The opinion issued today denied an injunction to abolish segregation and granted an injunction directing equalization of school facilities.

SCHOOL SEGREGATION UPHELD IN NEW TEST

Federal Court Rules Second Time In South Carolina Controversy

By The United Press

CHARLESTON, S. C., March 13. —A three-judge Federal Court which 10 days ago reheard the Clarendon County segregation case in Columbia Thursday reaffirmed its original decision that segregated school facilities are constitutional.

The unanimous opinion, written by Circuit Judge J. Parker of Charlotte, N. C., and concurred in by Circuit Judge Armistead M. Dobie of Norfolk, Va., and District Judge George Bell Timmerman Sr. of Columbia was filed in Federal District Court here.

Negro Parents Appealed

The three-judge court reheard the case March 3, after Negro parents of Clarendon County who brought the original case had appealed the first decision to the Federal Supreme Court.

The high court returned the case to South Carolina for consideration of "additional facts," which were in the form of a progress report by Clarendon County school officials telling of progress made toward equalization of Negro schools in the county.

The Negro plaintiffs, backed by the National Association for Advancement of Colored People, challenged the constitutionality of segregation on the public school level and asked that separation of the races in public schools be ruled out.

The case was first heard here last May and the court ruled 2-1 that segregation is not unconstitutional. But the court ordered Clarendon County to take immediate steps to bring about equality of its Negro school facilities.

Judge Waring Retires

District Judge J. Waties Waring of Charleston, dissenting member of the original panel, retired Feb. 15, and his place was taken by Dobie. Parker and Timmerman sat on both hearings with Parker the senior jurist each time.

The opinion issued Thursday denied an injunction to abolish segregation and granted an injunction directing equalization of school facilities.

At the rehearing March 3, Thurgood Marshall, NAACP attorney of New York, asked that the court rule segregation out because Clarendon County "has not yet equalized its Negro schools." But Marshall admitted progress toward "physical" equalization was being made.

Thursday's opinion said "the defendants have complied with the decree of the court to equalize facilities as soon as humanely possible, and no good could be accomplished for anyone" by the court ordering an end to segregation now.

Clarendon School Suit By-Passed

Supreme Court To Await Lower Court Equalization Rule

12d

WASHINGTON — (INS)— The Supreme Court refused Monday to rule on the controversial South Carolina segregation case until a lower court determines whether equal public school facilities are being provided for Negroes.

According to some observers, this action by the nation's top tribunal hints that the Supreme Court might be inclined to rule in favor of continued segregation in schools if it is established that colored students are provided equal facilities.

It vacated a lower court decision upholding a South Carolina law requiring separate schools for whites and Negroes, but noted that the case could be appealed again at a later date.

Sat. 2 2 52

THE SPECIAL three - judge lower court ordered the state to provide equal school facilities for colored children, and instructed the state to report on what it had done to carry out the order in six months.

The Supreme Court noted that the district court has not yet given its view on this report, submitted late last year.

Its 7-to-2 opinion declared:

"Prior to our consideration of the questions raised on this appeal, we should have the benefit of the views of the district court upon the additional facts brought to the attention of that court in the report which it ordered.

P. 1. •

"THE DISTRICT court should also be afforded the opportunity to take whatever action it may deem appropriate in light of that report."

The key case was brought to the Supreme Court by a group of Negro parents in Clarendon county, S. C. They contended their children's constitutional rights were violated because segregation deprived them of equal educational opportunities and did them "irreparable harm."

The school board argued the time was "not ripe" for a Supreme Court ruling on the constitutional issue because it was in the process of carrying out the lower court order to provide equal facilities.

Journal and Courier

IT POINTED out that South Carolina recently approved a three per cent sales tax and a 75-million dollar bond issue for a statewide school improvement program.

Sat. 2-2-52

South Carolina Gov. James Byrnes has warned the state may abolish the public school system if the Supreme Court rules Negroes must be admitted to white schools.

The case is the most clear-cut challenge to the "separate but equal" doctrine to reach the high court in many years.

Involved is the constitutionality of segregation in 18 states and the District of Columbia.

A Segregation Case Ruling

The Supreme Court's ruling last Monday in the South Carolina school segregation case did not go directly into the constitutional issue involved, but its opinion may be construed, we believe, as indicating that the doctrine of separate-but-equal facilities figures largely in the thinking of the present court majority.

News

That doctrine was first proclaimed by the court in 1896 and never has been set aside. It holds that states may provide separate public school facilities for white and Negro children, if the facilities are equal.

In the South Carolina case a special three-member United States District Court, sitting in Charleston, upheld such segregation in a two-to-one decision.

Charleston 2-4-52

U. S. Circuit Judge John J. Parker of Charlotte, N. C., and U. S. District Judge George Bell Timmerman of Batesville, S. C., ruled that segregation in public schools "is a matter of legislative policy for the several states, with which the federal courts are powerless to intervene."

Summary

These two judges also declared that "in a country with a great expanse of territory, with peoples of widely differing customs and ideals, local self-government in local matters is essential to the peace and happiness of the peoples in the several communities as well as to strength and unity of the country as a whole."

P. 10

In his dissent, District Judge H. Waring of Charleston, who earlier on the day of the Supreme Court's decision had announced he will retire Feb. 15, maintained that "all the legal guideposts, expert testimony, common sense and reason point unerringly to the conclusion that the system of segregation in education adopted and practiced in South Carolina must go and must go now."

In appealing the special court's majority ruling directly to the Supreme Court, the National Association for the Advancement of Colored People asked that school segregation be held unconstitutional.

12 * * *

In its decision last June the special court directed public school officials to report back within six months as to what they had done toward equalizing school facilities.

The Supreme Court pointed out that the special court has received this report but had not given its own views on it. The high court said it should have those views before acting on the case. It also said the lower court should have opportunity "to take whatever action it may deem appropriate in the light of that report." So the special court's decision was vacated and the case was returned for "further proceedings." The Supreme Court majority said another lower court judgment may provide the basis for a further appeal.

Thus it would appear that this majority feels that what has been done toward really equalizing facilities is basic in the case.

However, Justices Black and Douglas said they favored hearing the case immediately and giving a decision on the constitutional question involved. Additional facts in the report to the special court, they asserted, are "wholly irrelevant" to the constitutional question.

* * *

It is this paper's conviction that segregation in the South's schools remains imperative to the best interests of both races and that the utmost endeavors to establish equal facilities wherever segregation prevails are likewise essential.

Segregation Wins Respite, Not Victory

12d

Governor Jimmy Byrnes' glee to the contrary, the Supreme Court's return of the South Carolina school segregation case to the court where it originated should in no circumstance be considered a victory for segregation.

Conclusion

The Supreme Court merely said that additional information on the issue has been filed in the federal district court at Charleston and that the justices need the benefit of "these additional facts." In the lower court panel of three judges last June, segregation was upheld in public schools in Clarendon County, but the judges ordered that steps be taken to set up equal facilities for both races.

It becomes increasingly apparent that sooner or later the South must abandon the pattern of school segregation on orders of the courts unless separate, but equal, facilities are provided.

Wed. 1-30-52

The fact is that South Carolina, Georgia and other Southern states have a moral, if not legal, obligation to provide equal school facilities for Negro children. Indeed, the obligation goes beyond that to equality of educational opportunity for all children regardless of color or place of residence. The present administration has accepted this obligation.

P. 4 Atlanta

Georgia's legislature is considering a bill from now may be too late to avoid the conferences in view of the fact that 12 months which would go a long way in speeding this sequences of delay.

equalization process. A disagreement between educators and legislators threatens the measure, at least for this session of the Assembly. A precious year will be lost before the Assembly meets again, and a possible two years before the measure could become effective.

We trust that Georgia school people and Georgia legislators can compromise their dif-

Court Sends Segregation Ruling Back

Top T...
Carolina...

By LEWIS ...

New York Times ... Institution

WASHINGTON, Jan. 28—A Supreme Court ruling on segregation of white and Negro children at the public school level was postponed Monday when the highest tribunal asked for further details on the vital and much discussed matter.

Delay may withhold Supreme Court action until the next term, well beyond the national political conventions of July, and the resulting presidential campaigns.

UNSIGNED OPINION

Action was taken in the Supreme Court by a short, unsigned opinion stating that a Federal District Court in South Carolina had not given its views on a report as to whether "substantially equal" educational facilities had been furnished to Negro students.

The Supreme Court held it should have "the benefit of the views of the district court upon the additional facts brought to the attention of that court in the report."

Accordingly, the case was returned to South Carolina for further proceedings.

NEGROES BRING SUIT

Justices Hugo L. Black and William O. Douglas of the Supreme Courts so-called "advanced" wing, dissented. They held that enough details are now available; and that the additional facts of the report "are wholly irrelevant" to the constitutional questions presented to the court by Negro children in South Carolina. These two justices said the case should be assigned for argument now.

The South Carolina case arose in Clarendon County where a group of Negroes brought a suit to equalize school facilities for Negro and white students. The case was tried last spring in Charleston where lawyers for the National Association for the Advancement of Colored People represented the plaintiffs.

In a decision June 23, 1951, a special three-judge Federal Court upheld racial segregation. However, it ordered that the Negro schools must be made equal to those for white children. It commanded school officials to report back within six months upon the progress made. Judge J. Waties Waring dissented from the majority, composed of Circuit Judge John J. Parker and District Judge George Bell Timmerman.

PARENTS APPEALED

Dissatisfied with the decision, the parents of the Negro children appealed to the Supreme Court. This appeal was filed before the school officials had given their "progress" report to the Federal Court in South Carolina; and that court has never released the document.

Failure to do this was given by the Supreme Court as the reason for its action Monday.

"The district court," said the opinion, "has not given its views on this report, having entered an order stating that it will withhold further action thereon while the cause is pending in this court on appeal.

"Prior to our consideration of the questions raised on this appeal, we should have the benefit of the views of the district court upon the additional facts brought to the attention of that court in the report which it ordered.

VACATE JUDGEMENT

"The district court should also be afforded the opportunity to take whatever action it may deem appropriate in the light of that report. In order that this may be done, we vacate the judgement of the district court and remand the case to that court for further proceedings.

"Another judgement, entered at the conclusion of those proceedings, may provide the basis for any further appeals to this court."

Although the Supreme Court acted upon the South Carolina case, it passed unnoticed at least for the time, a similar situation in Kansas. This controversy affects public schools in Topeka, a special three-judge court having failed to declare segregation unconstitutional.

Byrnes Declares Court Rule Backs S. C. Segregation

COLUMBIA, S. C., Jan. 28 — (INS) — Gov. James Byrnes Monday declared the U. S. Supreme Court ruling in the school segregation case "in our favor."

The governor pointed out that the state had moved for dismissal of the appeal on the grounds that two issues in the case existed and only one had been acted upon. The governor said:

"The Supreme Court has apparently agreed that we are right —that the case should not be heard piecemeal."

His intrepretation is that the case has not reached the point where appeal was proper.

Governor Brynes said the state is trying to provide equal facilities as fast as federal restrictions on building materials will permit.

RULING DECLINED ON SEGREGATION

Supreme Court Vacates S. Carolina Decision

(The Associated Press)

Washington, Jan. 28—The supreme court declined to rule finally Monday on a controversial lower court decision that South Carolina's separate schools for white and Negro public school pupils are constitutional.

The court sent back for further evidence and action a case in which a special three-judge court had held 2-to-1 that they are constitutional. The lower court's finding was temporarily vacated.

The action was announced in a 7-to-2 unsigned opinion. The court's order said the lower tribunal had not determined finally all the issues before it in the case, which involves District No. 22 in Clarendon county, S. C.

The practical effect of the action probably will be to delay until the next supreme court term, starting next October, any final ruling in the case.

The United States district court for the Eastern District of South Carolina had found that educational facilities offered Negro children were not equal to those offered white children, although it said the system is not unconstitutional.

It told school officials on June 21, 1951, to report to the district court in six months as to what action had been taken to make facilities equal, as the court ordered.

Black, Douglas Dissent

That report had been filed, but in the meantime, the case was taken directly to the supreme court. The district court in South Carolina said it would not give its views on the report, since the case had gone to the supreme court and thus was out of its hands.

In Monday's action the high tribunal said it would like to have the "benefit of the views of the district court" on the report before it made any ruling of its own.

"Another judgment entered at the conclusion of proceedings may provide the basis for any further appeals to this (supreme) court,' the court said.

Justices Black and Douglas dissented. They held that any views from the school officials on their action "are wholly irrelevant to the constitutional questions presented" before the supreme tribunal.

In the original case, the question was whether separate schools for Negro and white children—as called for under the constitution of South Carolina—are in violation of the 14th amendment to the US constitution. This amendment says, in part, that all persons have equal protection of the laws.

The South Carolina court declared separate schools called for under the state constitution are not in violation of the US constitution.

Justices Black and Douglas said the high tribunal should hear arguments on the case immediately and make a decision on the constitutional question.

Segregated Schools Held Legal By U. S. Court in South Carolina

CHARLESTON, S. C., March 13 (UP).—A three-judge Federal court reaffirmed today its decision that segregated schools are constitutional. The opinion issued today denied an injunction to abolish segregation and granted an injunction directing equalization of school facilities.

The unanimous opinion, written by Circuit Judge John J. Parker, of Charlotte, N. C., and concurred in by Circuit Judge Armistead M. Dobie, of Norfolk, Va., and District Judge George Bell Timmerman, of Columbia, was filed in Federal District Court here.

The three-judge court reheard the case March 3, after Negro parents of Clarendon County, S. C., who brought the original case had appealed the first decision of the Supreme count.

The Supreme Court returned the case to South Carolina for consideration of "additional facts," which were in the form of a progress report by Clarendon County school officials telling of progress made toward equalization of Negro schools in the county.

The Negro plaintiffs, backed by the National Association for the Advancement of Colored People, challenged the constitutionality of segregation at the public school level and asked that separation of the races in public schools be ruled out.

The case was first heard here in May and the court ruled 2-1 that segregation is constitutional. The court ordered Clarendon County to take imediate steps to bring about equality of its Negro school facilities. The Negroes appealed directly to the Supreme Court. When the Supreme Court returned the case to South Carolina, the rehearing was shifted to Federal Court in Columbia.

District Judge J. Waties Waring, of Charleston, dissenting member of the original panel, retired Feb. 15 and his place was taken by Judge Dobie.

Court Delays Ruling On School Segregation

Post. P. I. Washington, D. C.

The Supreme Court yesterday passed up a request that it decide at this term of court whether segregation in the public schools violates the Constitution. Instead, it sent back to South Carolina for further legal moves a case that directly raised that issue. Thus a final court decision of the controversy, loaded with political dynamite as well as vast social consequences, now appears unlikely until after the coming presidential election.

Two justices—Hugh L. Black and William O. Douglas—said they favored an immediate hearing on the segregation issue. But the seven others joined in an unsigned opinion ordering the lower-court action first.

Directly involved is School District No. 22 in Clarendon County, S. C. Last June a special three-judge court ruled, 2-to-1, that segregation in itself does not violate the Constitution's requirement in the Fourteenth Amendment for "equal protection of the laws" to all persons.

At the same time, the lower court ordered the school district to report in six months what action it had taken to carry out the court's mandate for "separate but equal" school facilities for both races.

The report, detailing plans for a 75-million-dollar State program for Negro schools, has been turned in, but the lower court said it would do nothing until the Supreme Court acted.

But the high court declared yesterday that it "should have the benefit of the views" of the lower court on "the additional facts brought to the attention of that court in the report which it ordered" and of whatever action "it may deem appropriate in light of that report."

Hence, said the Supreme Court, "in order that this may be done, we vacate the judgment of the District Court and remand the case to that court for further proceedings. Another judgment, entered at the conclusion of those proceedings, may provide the basis for any further appeals to this court."

This means, in efect, that whatever the lower court does on the basis of the report can be appealed to the Supreme Court Court. But it would be next fall before a case could be argued and next winter before a decision could be handed down.

Black and Douglas, the court opinion stated yesterday, "believe that the additional facts contained in the report to the District Court are wholly irrevelant to the constitutional questions presented by the appeal to this court and that we should note jurisdiction and set the case down for argument."

A similar case, involving segregation in public schools of Topeka, Kans., also has been appealed to the Supreme Court but no action has been taken. It appears unlikely, in the lgiht of yesterday's action, that the court will make any move until the South Carolina case comes back. A District of Columbia case, testing the legality of Washington's segregated public schools, is still before the District Court here.

In all, the District and 17 states have segregated school systems and segregated schools exist in some parts of other states as well. All would be affected should segregation be struck down in the South Carolina csae.

In other actions yesterday, the Supreme Court:

1. Agreed to consider two cases involving the right to refuse to answer questions on grounds of possible self-incrimination. One case involves a California witness in a perjury trial who refused to say whether he had been a Communist or had seen the accused at party meetings. The other involved a Philadelphian who refused to tell a Federal grand jury whether he was in the numbers business.

2. Refused to consider the appeal of Capt. William H. Miley, a reserve officer of 6124 N. 18th rd., Arlington, Va., who had sued for release from duty on the ground that his commission expired last July and he was being illegally detained. The Court of Appeals in Richmond had ruled that he could be kept in uniform until six months after formal termination of the last war.

3. Uhheld, 6 to 3, an Interstate Commerce Commission regulation requiring truckers to avoid congested areas when hauling dangerous cargoes. Involved was the truck that exploded inside the Holland Tunnel, New York, in 1949. Justice Tom Clark spoke for the majority, while Justices Black, Felix Frankfurter and Robert H. Jackson dissented.

4. Admitted to practice Justice Jackson's 32-year-old son, William E. Jackson, who practices law in New York. The son was presented by John Lord O'Brian, who presented his father to the court 21 years ago.

Decision Upholding Race Segregation In Carolina Set Aside

WASHINGTON — (AP) — The Supreme court Monday set aside, at least temporarily, a lower court decision upholding segregation of white and Negro school children in South Carolina.

The decision—given by a special three-judge U. S. district court in Charleston, S. C.—was appealed directly to the high tribunal by lawyers for the National Association for the Advancement of Colored People (NAACP).

By a 7-2 vote the supreme court vacated the decision on the ground that the special court had not determined finally all the issues before it.

The special court in its decision last June 21, directed public school officials to report back within six months on what they had done to supply equal facilities for white and Negro students.

Monday's brief, unsigned supreme court opinion said the special court has received this report but has not given its own views on it.

The high tribunal said that before it acts on the case it should have the benefit of the special court's views on the additional facts brought out in the report.

The decision added that the special court also should have an opportunity "to take what ever action it may deem appropriate in the light of that report."

Because of this holding, the high court vacated the special court's judgment and sent it back for "further proceedings."

Justices Black and Douglas noted that they favored hearing the case immediately and giving a decision on the constitutional question involved. They said they felt the additional facts made in the report to the distric court are "wholly irrevelant" to the constitutional question.

Florida Negro's Plea Fails in High Court

By The Associated Press.

WASHINGTON, March 3—The Supreme Court today let stand a decision that Negroes might be restricted in the use of a city-operated golf course.

The court refused to review a Florida Supreme Court decision in a case affecting the Miami Springs Country Club golf course. The club is owned and operated by the City of Miami.

Negroes are permitted to use the course on Mondays. White golfers use it other days.

Joseph Rice sued to win unrestricted use of the course, but lost. His futile appeal to the highest tribunal contended he was denied equal protection of the laws as guaranteed by the Constitution's Fourteenth Amendment.

Justice Hugo L. Black and William O. Douglas favored granting Mr. Rice a hearing.

The Supreme Court said in a fifty-word order that it would not hear the case because the Florida decision "is based upon a non-Federal ground adequate to support" that decision.

S. C. School Case Back To Supreme Court

Charleston, S. C.—The famous Clarendon County school case challenging the validity of the segregation laws of South Carolina is again on its way to the United States Supreme Court which is being asked to review and reverse the lower court decisions upholding segregation.

An appeal in this bitterly contested case has been filed in the United District Court here by NAACP attorneys Thurgood Marshall and Robert L. Carter of the national legal staff in New York; Harold R. Boulware of Columbia, S. C.; and Spottswood W. Robinson, III, of Richmond, Va.

The appeal, filed on May 10, contends that the district court erred in refusing to enjoin the enforcement of the state's segregation laws, that racial segregation in public education is invalid, that governmental action based solely upon race or color denies the equal protection of the laws and is inconsistent with the Constitution in that it is designed to import the inferiority of the Negro.

Segregation in Southern Schools

Constitutionality Hangs in the Balance as Supreme Court Seeks Further Report

By Henry Lesesne

COLUMBIA, S. C.—The South isn't surprised that there is no immediate prospect of a decision on whether separate grade schools for the races are in keeping with the Constitution. Somehow, the issue seemed too big, too broad in its implication, politically and socially, to expect something in the way of finality so soon. Now the Supreme Court has sent the Clarendon County case back to the three-judge Federal district court for what amounts to a more complete report. This means that there will be a delay of a year, maybe longer, before there will be a final determination of constitutionality of the issue involved.

It doesn't mean any change in school policy in the South or in Southern attitude. It does mean, however, that the South will have more time to start putting its house in order—a job that is already under way in South Carolina, but something that can hardly be accomplished even over the course of a few years. It means that Southerners still do not know what to expect. It means they will continue to speculate on the broad consequences of a decision that could be adverse to the seventeen segregation states and on the political consequences that could come overnight.

Some states in the South which do not have large Negro populations might accept an end to segregation with not much ado, just as they have accepted the breakdown of segregation at the graduate school level, but that certainly does not go for states like South Carolina, Georgia and Mississippi, where there are unusually large Negro populations and Southern tradition is at its strongest. Governors of such states have said the people would do away with their public school systems as such before they would accept an end to segregation.

MANY Southerners, in respect to the action of the Supreme Court in not deciding the underlying issue now, might be inclined to accept the view of the "Charlotte (N. C.) Observer," which comments editorially: "With no contempt intended, we suspect majority members of the Supreme Court may have been hedging a little, or at least stalling for time. . . . We can well understand the reluctance of the high tribunal to take a yes-and-no stand on a question that holds such broad implications. . . . But a clear-cut decision, sooner or later, is inescapable."

In an attempt to bring Negro schools up to a par with the white schools, South Carolina has been proceeding as rapidly as possible with a $75 million school-building program, authorized by the state Legislature last spring and financed by a new 3 per cent general sales tax. However, the unavailability of steel and other critically needed materials has been something of a drawback. There is also the fact that any program of this size involves a great deal of planning and study before it can be rushed to any spectacular conclusion.

YET in some parts of the South the uncertainty occasioned by the South Carolina suit has been used as an argument against the speeding up of much-needed school improvement programs. In Mississippi, for instance—a state which, like South Carolina, has a very large Negro population—a $5 million-a-year, twenty-year school construction program has been proposed for some time now, but the opponents advise a "go slow" attitude until the segregation issue is finally decided. Yet in Mississippi and other states of the deep South no one seems to think that the abolition of segregation could be enforced.

Even now in the South Carolina Legislature there is pending a resolution which would permit the people this November to vote on a proposed constitutional amendment that would clear the way for the state to do away with its public education system as it exists now if that course should become desirable. The proposed amendment would repeal a part of the constitution which says that "the General Assembly shall provide for a liberal system of free public schools for all children between the ages of six and twenty-one years." The proposed amendment, strongly urged by Gov. James F. Byrnes, would remove a constitutional obstacle to turning the whole school system over to some private or quasi-private agency.

In Georgia steps have been taken to withhold state funds from all public schools should segregation be ordered not only in the grade schools but even in the graduate schools. This proviso is written into the appropriations bill. This way of thinking seems to prevail not only in the so-called deep South states, but at least to a considerable extent even in Virginia. Before the Virginia General Assembly now is a bill that is intended to permit the state to finance private schools for white students if the Supreme Court finally rules that segregation must go. Under the bill school boards could enter into contracts with private, non-profit organizations or associations to operate the schools.

The author of the measure, State Sen. Charles T. Moses, of Appomattox, expresses his views in this manner: "What we want is for the Federal government to stay out of our schools. . . . And if we lose some Federal funds because we keep segregation and if we have to lower standards because of that loss, I think it's better than to have non-segregation. I believe that both races want to keep segregation."

MANY Southerners seem to take the view that the delay in deciding the segregation case is in the South's favor, since it gives the South that much more time to improve schools for the minority race. At least, that is true in South Carolina, the state directly involved. Gov. Byrnes has said that the school building will go forward at the fullest speed possible regardless of the pending litigation, since the state certainly needs the school buildings anyway.

After the Supreme Court decided not to rule on the issue now, Sen. Burnet Maybank, D., S. C., commented: "I am certain that when the Supreme Court checks the report of the state's efforts to provide better schools, it must decide that South Carolina is trying faithfully to carry out its responsibilities. The only reason for the delay in building more schools is the lack of steel and other critical materials. The court will be amazed to find out how much the people have sacrificed to raise the extra school money."

The way the whole litigation stands now is as follows: Last June a special three-judge Federal district court at Charleston upheld public school segregation in a two-to-one decision, but declared schools in the Clarendon County school district involved were not equal and ordered that equal facilities be provided, with the school officials to submit a progress report within six months to show what had been accomplished.

MEANTIME, with the suit in this status, the National Association for the Advancement of Colored People appealed the case to the Supreme Court. The progress report was filed on Dec. 20, showing that a modern high school building was being built for Negroes in Clarendon County and citing other steps contemplated under the state's new $75 million school-building program which will aid the economically poorer counties, of which Clarendon is one. The district court accepted this report. Some considered this to mean the court implied satisfaction with the progress report, but the court said it would not give its views, since the case had been appealed to the Supreme Court and was out of the district court jurisdiction.

NOW the Supreme Court says in its seven-to-two unsigned opinion that it would like to have the "benefits of the views of the district court" on the report before it makes a ruling of its own. It says that another judgment, entered at the conclusion of the proceedings, could form the basis of another appeal. Justices Black and Douglas dissented, holding that any views from the court on the progress report "are wholly irrelevant to the constitutional question involved."

In the original district court decision last June, Judge John J. Parker of Charlotte, N. C., and Judge George Bell Timmerman of Columbia wrote the majority opinion, with Judge J. Waties Waring of Charleston, who holds that segregation in itself is illegal, dissenting. Judges Parker and Timmerman took note of recent Supreme Court decisions abolishing segregation at the graduate-school level, but pointed out a basic difference between graduate schools and grade schools—namely, that attending a graduate school is more a matter of choice, while state law compels children to be sent to grade schools until they become a certain age.

High Court agrees to rule on segregation in schools

WASHINGTON, June 9—(AP)—The Supreme Court today agreed to say whether segregation of white and Negro children in elementary public schools should be outlawed.

The court granted hearings on two appeals by Negro parents who claim segregation is a "stigmatizing badge of inferiority" which has a bad effect upon their children. They contend segregation therefore violates the constitutional guarantee of equal protection of the laws.

The appeals contest the validity of segregation only in schools in Topeka, Kan., and Clarendon County, S. C. However, the outcome of the cases will affect public school segregation generally.

AMONG OTHER ACTIONS today before it recessed until Fall, the high court:

Held 6-3 that the railway labor act bars unions "from using their position and power to destroy colored workers' jobs in order to bestow them on white workers" and that federal courts must issue injunctions to "protect those threatened by such an unlawful use of power." The tribunal found that an agreement between the Brotherhood of Railroad Trainmen and the St. Louis-San Francisco Railway threatened Negro train porters "with loss of their jobs because they are not white and for no other reason."

Set aside—while leaving the door open to a new trial—the conviction of three Seattle men on charges of using an unlicensed radio transmitter to trick horse race bookies out of a large sum of money. The case turned on the right of Federal Communications Commission investigators who lacked a search warrant to seize the transmitter from an auto parked in a public garage. The court split 6 to 3 in agreeing to a government request to order the convictions set aside because of an error in the case. But it specified its action should not preclude a new trial.

Held 7-2 today that states may properly require a criminal's claim of insanity to be proved beyond a reasonable doubt. Specifically, the tribunal upheld the death sentence of Morris Leland for the sex killing of 15-year-old Thelma Taylor near Portland, Ore., in August, 1949. The court rejected a plea that it overturn Oregon's unique law requirement in insanity pleas.

DEFERRED ACTION at least until October on a Justice Department request that it settle the complex Dollar Steamship cases once and for all by deciding who owns some $69 million worth of stock in American President Lines, Inc. One

phase of the long-standing ...tion dispute may mean that ...ds to erect new guideposts ... the ... of many side issues involves a contempt of court judgment against Secretary of Commerce Sawyer.

Dismissed as moot a case in which the three big unions questioned legality of the government's 1950 seizure of the railroads to avert a strike. While the appeal was pending the wage dispute between the unions and railroads was settled and President Truman on May 23 ordered the carriers returned to private operations.

The court's agreement to rule on ... there will be aban... school systems the... doned.

Other Southern states—notably Georgia, Virginia and Alabama—have taken steps which could lead to abolition of the public school system, in favor of privately-operated classrooms.

The high tribunal will hear argu...

12d 1952 SUPREME COURT

REFUSAL
TO REVIEW A DECISION BARRING SEGREGATION OF NEGROES
AND WHITE PASSENGERS IN COACHES.

'51 Decision Banning Railroad JC Cited

BALTIMORE

Judge Morris A. Soper of Baltimore wrote the lower court decision outlawing jim crow on railroads which the United States Supreme Court upheld on Monday.

This decision, handed down by the U.S. District Court for the Fourth Circuit in January, 1951, ruled that separation of colored and white passengers by the Atlantic Coast Line Railroad is an unconstitutional burden on interstate commerce. Complainant in the case was William C. Chance, school principal in Parmele, N.C.

The Supreme Court, by refusing to review this decision, in effect, outlawed all segregation on railroads and other public transportation. The high court previously has ruled against jim crow practices in Pullman cars, in railroad dining cars and in buses.

2 Other Judges Concur

The Chance case was argued before the lower court on Jan. 11, 1951, and the decision written on Jan. 27, 1951, with Judge John J. Parker, Charlotte, N.C., and Armistead M. Dobie, Charlottesville, Va., concurring with Judge Soper.

The decision said in part:

"The evidence does not show that violence or disorder has occurred where the carrier, to serve its own purposes, has relaxed the enforcement of segregation or has failed to apply it to certain classes of traffic.

"The regulation and its enforcement in this case is attacked upon a number of grounds but we find it necessary to consider only one, namely, that it unlawfully burdens interstate commerce and is therefore repugnant to Clause 3, Section 8 of Article of the Federal Constitution, which empowers Congress to regulate commerce among the several states."

The decision added:

"The principle of this case was recently approved in Morgan vs. Virginia, 328 U.S. 373, where the court held invalid as a burden upon interstate commerce a Virginia statute which required the separation of white and colored interstate passengers on motor vehicles moving in interstate commerce.

Previously Stricken Down

"These cases had to do with the effect of state segregation statutes; but as we have seen, carrier regulations or practices, as distinguished from state statutes which denied equality of treatment to the races were stricken down as violations of the Interstate Commerce Act in Mitchell vs. U.S. and Henderson vs. U.S., supra.

"In the last mentioned cases the court did not reach certain by the complainant, but in all the cases, whether the decision was based upon a violation of a provision of the constitution or of a statute of the United States, the problem under consideration was the standard of conduct to be observed by interstate carriers in dealing with members of the traveling public.

"Moreover, the ill effect upon the passengers and the disturbance of interstate traffic were much the same whether the carrier's conduct was treated technically as a denial of equal privileges to the races or as a burden upon interstate commerce.

"Thus, in the Mitchell case the complaint was excluded from a Pullman car and required to ride in a second-class coach, and in the Henderson case the passenger was excluded from certain tables in the dining car and forced to wait until seats at other tables were vacant before he was served.

"The decisions which invalidated carrier regulations as contrary to the statute must therefore be considered in the instant case, although the regulation is here attacked as an undue burden upon commerce."

Regulation "Invalid"

In conclusion, the decision said:

"The railroad regulation now before us must be declared invalid. Not only does its enforcement interfere with the uniformity which should characterize interstate carriage from one end of the route to the other, but its irregular enforcement for the convenience of the carrier, dependent upon the number of passengers and the character of accommodations which they purchase, adds to the burden upon the traffic by increasing the confusion and discomfort of the passengers.

"When white and colored passengers are permitted to ride together for part of their journey through the State of Virginia, and then are compelled to separate and change cars, and when passengers in coaches are segregated on account of race while passengers in Pullman and dining cars are permitted to ride together irrespective of race, the burden upon interstate commerce is as clearly manifest at that imposed by the statute of Virginia which was invalidated in the Morgan case.

"It is true that the regulation of the carrier was not enacted by state authority, although the power of the state is customarily invoked to enforce it; but we know of no principle of law which requires the courts to strike down a state statute which interferes with interstate commerce but to uphold a railroad regulation which is infected with the same vice."

Crusade Against Jim Crow Travel

(An Editorial)

The United States Supreme Court on Monday took the fourth step in a long and continuing crusade against segregation in travel.

It was Congressman Arthur W. Mitchell, who back in 1937, launched the first attack against second-class accommodations for passengers who paid first-class fares.

The result of his fight was a decision by the high tribunal in May, 1941 that railroads could not refuse Pullman accommodations to any passenger because of his race.

The second step came five years later when Irene Morgan was ejected from a bus while traveling through Virginia. The carrier argued that it was compelled under Virginia law to act, since Mrs. Morgan had refused to take a seat in the rear of the vehicle.

In May, 1946, the Supreme Court in a historic decision held that state laws designed to enforce segregation of passengers placed an "undue burden on interstate commerce" and therefore were invalid.

Four years later in June, 1950, the high court in the Elmer W. Henderson case held that discrimination against colored passengers desiring dining car service was illegal.

The Southern Railroad was forced to drop a green curtain it had hung around a single table in the end of the car to segregate colored diners from other passengers.

Now, in November, 1952, two years later, the court in a brief order, with no opinion, upholds a lower court's decision that a railroad cannot enforce regulations requiring segregation of coach passengers.

The Atlantic Coast Line Railroad on June 25, 1948, sought to compel William Chance, a 55-year-old school principal of Parmele, N.C., an interstate passenger, to move forward to a jim-crow coach.

Mr. Chance refused. At Emporia, Va., he was ejected from the train and charged by police with disorderly conduct. He sued for $25,000 damages and was awarded $50.

But the trial jury held that the railroad's segregation regulation was "vaild and reasonable." The Fourth U.S. Circuit Court of Appeals did not agree. The opinon written by Judge Morris A. Soper of Baltimore held that segregation of coach passengers is invalid as a burden on interstate commerce.

It was this ruling that was upheld Monday by the Supreme Court. Thus one more stumbling block to equality of treatment in the important transportation field has been removed.

Full credit must be given a courageous North Carolina school principal, who knew his rights and was willing to stand up for them. And to the unrelenting determination of the NAACP that full citizenship shall be the happy lot of every American.

Segregation Rule Stands

WASHINGTON, Nov. 19 (AP)—A spokesman for the Southern Railway said today the road plans no change in its present practices as a result of Supreme Court refusal to review a decision barring segregation of Negroes and white passengers in coaches.

The decision was reached by the Fourth U.S. Circuit Court of Appeals in a suit brought by William O. Chance, a Negro from Parmele, N.C., against the Atlantic Coast Line Railroad.

The Supreme Court, by refusing last week to review that decision, let it stand as the law within the jurisdiction of the Fourth Circuit, which includes, Maryland, Virginia, North Carolina, South Carolina and West Virginia. The high court did not affirm the ruling.

The Southern Railway spokesman said "the Supreme Court has many times stated that its denial of certiorari (review) is in no sense an affirmance of the decision sought to be reviewed."

"The Supreme Court's action in the Chance case," he continued, "makes no change in the existing law and necessitates no change in the present practices."

He said that "for some time the Southern Railway has not endeavored to transfer southbound Negro coach passengers at the border when traveling from non-segregated areas."

He did not say whether the road requires segregation of Negro passengers boarding coaches in segregated areas.

January Is Deadline For RR Segregation

NEW YORK — The NAACP is "prepared to take the necessary legal steps against all of the southern railroads" if any segregation in interstate commerce remains after the first of the year, Thurgood Marshall, NAACP special counsel has announced.

Commenting on the refusal of the U.S. Supreme Court to review an appeal by the Atlantic Coast Line from a lower court decision holding that segregation of passengers is an undue burden on interstate commerce, Mr. Marshall said, added to other decisions, it "should be enough to break down segregation in all interstate transportation."

Mr. Marshall had praise for the Virginia State Conference of NAACP branches and its lawyers who handled the case of William C. Chance who was ejected from an ACL coach in June, 1948, for refusing to move to a jim crow car. The incident occurred when Mr. Chance was on his way home from the 1948 Republican National Convention in Philadelphia.

A Matter Of Right

Commenting on the high court's ruling, Mr. Chance called it "a matter of right that the court should rule that colored citizens should not be required to ride in separate coaches on passenger trains. I believe that jim crow of train riders in the South is an injustice."

Mr. Marshall, however pointed out that past experience made it appear "doubtful that the southern railroads will follow the law as set down by the Supreme Court."

He said the NAACP legal defense staff would give the railroads until the first of the year to revise their rules "so as to prohibit all segregation in the coaches as well as the Pullman cars and dining cars throughout the south" before taking further legal action.

Throws Out Separate But Equal Claim

Rejects Appeal By Nation's Carriers To Reverse Ruling

WASHINGTON

The U. S. Supreme Court on Monday outlawed jim crow on railroads.

Upheld by the high tribunal was the ruling of the fourth U. S. Circuit Court of Appeals on Jan. 27, 1951. This ruling held that separation of white and colored passengers is an unconstitutional burden on interstate commerce.

The decision of the Supreme Court was given in a brief order, with no opinion.

It represents another triumph for the NAACP and a victory for William C. Chance, 55-year-old school principal of Parmele, N.C.

Mr. Chance was ejected from an Atlantic Coast Line railroad coach at Emporia, Va., when he refused to move from a white coach on June 25, 1948.

Arrested for disorderly conduct by local police, he sued for $25,000 damages from the railroad and Alva S. Lambeth, the conductor who put him off the train.

Ruled Invalid In '51

The regulation of the Atlantic Coast Line Railroad that required segregation of passengers on day coaches, was ruled invalid by the United States Fourth Circuit Court of Appeals in Jan. 1951.

The ruling is in line with that of the United States Supreme Court, in 1950, in the Elmer Henderson case, which banned segregation of any kind in the dining cars on the various Southern railroads.

The decision overrode a ruling of the United States District Court in Richmond, in which the segregation order of the railroad was declared "a responsible" regulation in a suit brought against the railroad by Chance.

The Circuit Court's decision on appeal of the case was made by Judge Morris A. Soper of Baltimore, who stated that since the rule "unlawfully burdens interstate commerce," it is contrary to the section of the Federal Constitution which empowers Congress to regulate inter-state commerce.

"Increases Discomfort"

The jurist pointed out that the segregation rule was not enforced uniformly, in that the company does not apply the rule in Pullman or in dining cars and does not enforce it in coaches between Washington and Richmond.

The regulation "adds to the burden upon the traffic by increasing confusion and discomfort of the passengers," Judge Soper stated, pointing out that he could only conclude because of this, that the rule "must be declared invalid."

The Atlantic Coast Line Railroad is the same railroad on which Fletcher H. Martin, 25, an orderly at Provident Hospital, Baltimore, was shot to death by a conductor in April 1947, for refusing to move into a jim-crow coach.

Once Sued By AFRO

Martin, who allegedly was asleep at the time the conductor began herding colored passengers out of the car in which they were into a segregated one, was en route to Dunn, N.C. to visit his family.

A suit brought by the AFRO-AMERICAN against the Atlantic Coast Line Company in 1946, on behalf of Ralph Matthews, William Scott and the Rev. William A. Jernagin, had established through the Court of Appeals — the right of reserved-seat passengers to ride uninterruptedly in the same coach while in inter-state travel.

Chance has a judgment of $55 against the railroad, which he may proceed to collect as soon as the order of the Supreme Court reaches the lower courts.

Had Round-Trip Ticket

Chance bought a round-trip ticket on the Coast Line from Rocky Mount to Philadelphia. On the return trip he traveled from Philadelphia to Washington over the Pennsylvania Railroad, and from Washington to Richmond, Va., over the Richmond, Fredricburg and Potomac Railroad.

At Richmond, the R.F. and P. locomotive was disconnected and employees of that railroad left the train. The Coast Line engine was connected and its employees took charge of the train.

When the train left Richmond it consisted of five baggage and express cars and eleven passenger cars, including five day coaches, a diner and five Pullman cars. The three forward coaches were set aside for colored passengers, and the two rear day coaches for white passengers.

Ordered To Move

At Washington, Chance was directed to the fifth or the rear day coach where he found a seat. Both colored and white passengers rode in that coach as far as Richmond without any difficulty.

After the Coast Line crew took charge of the train in Richmond, the Coast Line porter requested white persons seated in the three forward day coaches to move to one of the rear coaches, and colored passengers seated in the two rear day coaches to move to one of the forward coaches. Chance refused to move.

After the train left Richmond, the assistant conductor asked Chance to move to one of the jim-crow coaches. He again refused. Just before the train left Petersburg, Va., the conductor asked him to move to one of the jim-crow coaches. He again refused. The conductor then telegraphed to Emporia, Va., asking that police meet the train.

Arrested In Emporia

At Emporia, police boarded the train and asked Chance to move. He refused. The police told him he would have to leave the train. He left the train quietly and the conductor returned his ticket to him. He was arrested on a charge of disorderly conduct.

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UNIT CASE (GEORGIA)

The Federal High Court Consideration And the Unit Case

Again the Supreme Court of the United States has refused to act on the appeal testing the validity of the county unit system.

And again we say that the nation's highest tribunal has not ruled on the legality of the unit system itself. Jue. 4-8-52

On March 3 the U. S. Supreme Court dismissed an appeal from the Georgia Supreme Court in the case of W. M. Cox, the plaintiff alleging that the unit system violates the Federal Constitution's guarantee of equal protection of the laws. P. 4

The Supreme Court dismissed the case on the grounds that it found no substantial federal question involved. In its action yesterday the high court merely denied the petition for reconsideration.

The Supreme Court of the United States has not ruled on the validity of the unit system itself. It has ruled only on the validity of the appeal.

That is an important point to remember.

Supreme Court Not to Rule On Tennessee School Bias Case

By The United Press

The Supreme Court yesterday refused the plea of four Tennessee Negroes for a ruling on whether school segregation laws in themselves are unconstitutional.

In dismissing the case, the court left open to the South, as it has in the past, the framework of "separate but equal" education facilities for Negroes and whites.

The appeal for a review of Tennessee's segregation laws was made by four Knoxville Negroes who already had won the right to enroll in the University of Tennessee.

Federal Judge Robert L. Taylor ordered them admitted after their applications were denied because of their race. He ruled equal facilities were not available to them elsewhere.

The students, who had not yet enrolled, then asked the Supreme Court to require a direct ruling on segregation laws. The three-judge panel of which Taylor was a member had refused to do so.

Chief Justice Fred M. Vinson threw out the case after John J. Hooker, attorney for the university, told the court the Negroes will be admitted whenever they apply.

Hooker said university trustees had been informed it was useless to appeal Taylor's ruling because "The Supreme Court has decided just about all the questions there are in connection with admission of members of the colored race to graduate schools."

"If the board of regents is willing to admit these parties, what is there before us?" Vinson asked.

Vinson refused Thurgood Marshall of New York, one of the attorneys for the students, permission to speak "just a moment."

The students—Gene Mitchell Gray, Lincoln Anderson Blakeney, Joseph Hutch Patterson and Jack Alexandria — complained that graduate courses they wanted to take were not available at Negro schools in the State.

Hooker told the court that after they had won the right to admittance at the University, they could have obtained an injunction from Judge Taylor rather than appealing to the Supreme Court. He said their entrance was delayed while the university considered an appeal.

He said the university now "has no other intention but to comply with Judge Taylor's order" despite the State law forbidding use of public funds for a nonsegregation school and making it a criminal offense for a person to teach in one.

High Court Throws Out Negro Appeal

Case Would Affect School Segregation

Washington, Jan. 10 (AP)—The Supreme Court, in a rarely used procedure, today threw out an appeal in which four Negroes hoped eventually to get a ruling on constitutionality of Tennessee's school-segregation laws.

Chief Justice Vinson halted arguments and tossed the case out of court when counsel for the University of Tennessee said the four Negroes would be admitted there any time they applied.

The Supreme Court has taken such abrupt action only a few times in its long history. Customarily the court lets attorneys for each side argue fully, then takes the case under advisement for later decision.

Judgment Held Binding

The Tennessee case was halted soon after John J. Hooker, Nashville attorney for the university, told the justices:

"I am authorized to say that the university is willing to admit these Negroes at any time, in compliance with the order of U. S. District Judge Robert L. Taylor of Knoxville.

"We regard the judgment of the District Court as binding on the university. And, further, we regard it as a proper decision under the circumstances."

"Thus," said Hooker, "there remains no constitutional question in this case. Leave the constitutional issue until perhaps some later time in a proper case."

'Case Is Concluded'

Chief Justice Vinson spoke up: "Upon your statement that the university board will admit these applicants, we feel we haven't any case remaining before us. The case therefore is concluded."

Thurgood Marshall, one of the legal staff for the Negroes, sought to continue the argument "for a few moments," but Vinson shut him off.

"This case is concluded," the Chief Justice repeated.

Although the Supreme Court tossed out the Tennessee case, it still has pending before it requests that it review two other decisions involving the constitutionality of segregation in public grade schools in South Carolina and Kansas.

University Of Tennessee To Admit Negroes; Supreme Court Drops Antisegregation Case

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Judge Taylor had ruled the four Negroes were entitled to admission. But he did not issue an injunction compelling their admission because he felt the university would let them in, or file an appeal to a circuit court.

He cited earlier Supreme Court rulings in cases affecting other state universities in the South. These rulings were that states had to provide educational facilities for Negroes equal to those given white, or admit the Negroes to white universities.

Hooker told the Supreme Court that after Judge Taylor's ruling he polled members of the board of trustes of the University of Tennessee, advised them not to appeal, and told them to comply wit hthe judge's order. This took some time, he said, but the result was the decision to admit the Negroes.

"Thus," said Hooker, "there remains no constitutional question in this case. Leave the constitutional issue until perhaps some later time in a proper case."

Hooker recalled that federal courts have the policy of not deciding constitutional questions unless such decision is essential to dispose of the issues raised.

ANOTHER SETBACK

NASHVILLE, TENN. (NR Corresp.)

Thanks to a clever legal maneuver which snatched a test case on its racial segregation laws from the hands of the Supreme Court, Tennessee has gained a breathing space in which to hasten the construction of "equal but separate" school facilities for its Negroes.

Last spring US District Judge Robert L. Taylor ordered the University of Tennessee to admit four Negro applicants to its graduate and law schools on the ground that the state did not provide equal facilities for them elsewhere. The case was taken to the Supreme Court where the applicants pressed for a test of Tennessee's constitutional ban against unsegregated schools, charging that separation itself means inequality. Meanwhile, the state raised the state-supported Negro school, A. & I. College of Nashville, to university status and announced that the policy would be to make it the equal of the University of Tennessee.

On January 10, when the appeal of the four Negroes was being heard in Washington, John J. Hooker, attorney for the state university, interrupted proceedings to tell the justices, "I am authorized to say that the university is willing to admit these Negroes at any time." Whereupon Chief Justice Vinson halted arguments and tossed the

case out of court. Such an abrupt action has happened few times in the high-court's history. It is customary to allow the attorneys to complete their arguments and then render a decision or ruling after the case has been taken under advisement.

Attorneys for the National Association for the Advancement of Colored People, which handled the appeal, were disappointed over the outcome, but insisted that an important gain had been made in the admission to the state university previously closed to qualified Negro students. The university executive committee has moved to consider immediate admission of one of the four, Gene Gray, a Knoxville hotel employee. However, supporters of segregation expressed the belief that sufficient time had been gained by the Washington maneuver to complete new lines for defense of segregation in the state. A full-fledged graduate-study program will be under way at A. & I. within two years. Provision is made for Negro medical students at Meharry Medical College, a private Negro institution at Nashville, through state contributions. Unless anti-segregationists begin an immediate attack on the Tennessee law, this pattern of segregation may be cemented for years to come.